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PRINCIPLES OF LEGISLATION

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This is a period of revaluations. The crucial tests that have been imposed within the last year upon so many nations by the stress of war have probably led most of us to question and perhaps to doubt old, and as we had believed, firmly rooted tenets and dogmas. It is true that political science has long since abandoned the eighteenth century confidence in general theories and deductions; but there were many who had cherished at least a loyalty to certain fundamental political ideals: individualism, self-government, democracy; and even these are challenged by newly emphasized factors of strength and weakness that seem to determine the fate of nations. It behooves us now to be cautious in drawing premature conclusions from abnormal conditions, and to retain some faith in principles that have not been demonstrated to be unsound.

Amidst the confusion of political values we have all been impressed with the importance and with the achievements of technique, and we may be tempted to insist upon high technical standards in government as an undisputable political ideal. Yet

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we used to be tolerant of governmental imperfections in the belief that it was the temporary price we paid for more fundamental and enduring political gains, and this seems as yet to be the American political philosophy. Had a commission of economy and efficiency presided over American government from the beginning, it would tax the imagination to think of the millions that might have been saved from waste; but could there have been that spirit of individualism, that glamor of liberty, that made American institutions attractive to aliens coming to this country, and that made possible a national assimilation and consolidation which is without a parallel in history? Surely that is a political asset which no mere technical perfection of government could have won for us, and it warns us not to value the traditional essentials of American institutions too lightly.

Making all due allowance for this consideration, it is all the more necessary to insist upon high standards where the lower standard cannot be accounted for by political exigency or expediency. Concede that in rural districts the prevailing loose type of administrative organization should be continued, that is no reason why modern systems of accounting should not be installed; concede that we do not intend to give the administration the practical monopoly of initiating legislation that it has in Europe, that is no reason why private members should not have every facility to aid in the skilful drafting of measures. Or, putting it more generally, concede that governmental standards cannot be in every respect the highest, it ought still be possible to improve the purely technical processes which no government can dispense with. Where in the choice between two alternatives no political element is involved, there ought to be a united and persistent effort to secure the adoption of the better alternative.

Of all governmental activities legislation is the one in which the demand for high technical standards ought to encounter the least resistance. Loose administration serves distinct purposes and interests; defective legislation does not or only to a negligible degree. Legislation claims to make contributions to the body of jurisprudence which from times immemorial has been accounted a product of professional skill and learning, and will

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therefore always conform at least to the outward show and semblance of juristic technique. Practically every statute that we know of has been drawn up by a trained official or by a lawyer; clerical routine may master pure matters of style, but would be inadequate for the task of creating legally available rights and legally enforceable obligations which presuppose a fitting of the new piece of legislation into the mass of existing statute and common law. Perhaps the term judicial availability would best designate the technical or scientific quality of legislation; and this is consistent with purposes of the most diverse kind and nature. A clear comprehension of the difference between legislation as a branch of jurisprudence and legislation as a matter of policy is therefore an indispensable condition of a proper understanding of problems of law making.

It might seem that this distinction should have gained in emphasis and practical effect through the specifically American doctrine of judicial power, and the general impression is probably that America more than any other country has brought legislation under the control of jurisprudence; but I think that a careful analysis of the past history of the judicial treatment of the due process clause shows that this is not the case, and I believe that it can also be shown that the further development of constitutional law along its present lines is not likely to result in the building up of a system of principles of legislation.

The supreme court has refused to define the meaning of due process, but its underlying philosophical concept is not likely to be disputed: it stands for the idea that it is not the mere enactment of a statute in constitutional form that produces law, but the conformity of that enactment to those essentials of order and justice which in our minds are indispensable to the nature of law. Viewed in the light of history, these essentials are few, and the legislature is not apt to violate them except through inadvertence or in the heat of political passion. There consequently appeared to the original framers of the American constitutions as little need of insuring by express constitutional mandate the general conformity of statute to law, as is now felt in Great Britain or in her colonies. Indeed they seemed willing to concede that public exigency might now and then demand arbitrary action:

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thus Massachusetts, while guaranteeing in her bill of rights the application of the "law of the land" and of "standing laws," yet recognized the possibility of the suspension of laws, only requiring that it be done by the legislature or by its authority; even the taking of property for public use (without reference to compensation) might be sanctioned by the legislature; only bills of attainder and ex post facto laws, sometimes also retrospective laws, were specifically and absolutely forbidden. Massachusetts in this respect is typical; the term "due process" does not even occur in the first constitutions of the original States. The specific clauses of the bills of rights practically all dealt with issues that at one time or another had been the subject of political and constitutional controversy, and they were by no means looked upon as merely circumscribing the idea of government by law; thus in guaranteeing trial by jury, it was well understood that certain phases of law could and would be duly administered without it.

But the judicial power to declare laws unconstitutional gradually and perhaps inevitably introduced the idea of inherent limitations upon the legislative power. Practically all the early applications of that idea turned upon the protection of vested rights, which had for over one hundred years been treated as the cardinal principle of natural law wherever natural law had been systematized. Thus far then, inherent limitations merely enforced an almost universal dictate of justice. It was a very different matter to insist in the name of the idea of due process upon a demarcation of spheres of government and liberty, upon an immunity of individual action from legislative control. Until the middle of the nineteenth century no such idea was suggested by lawyers, courts or text writers. The prohibition legislation of the fifties gave the first opportunity of asserting such a liberty, but the slight attempts made in that direction found practically no judicial response. The second opportunity was given by the Granger legislation of the seventies, the first great attempt to control the traditional economic freedom; and now the supreme court, while sustaining the legislative power over railroads and warehouses, spoke in approving terms of the immunity of private business from legislative control.

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This idea then grew and established itself in connection with the attacks upon labor legislation from about the middle of the eighties, and produced the doctrine of a constitutional right of freedom of contract. The true nature of this judicial control revealed itself in the decision of the New York court of appeals which annulled the first American workmen's compensation law. The point at issue was a rule of liability, a subject closely interwoven with the very elements of the concept of law; yet the court suggested an appeal to the people to sanction the principle which it declared violative of the guaranty of due process. It is well known that the appeal has been successfully made and that the court of appeals has bowed to the popular verdict. (Jensen vs. So. Pac. R. Co., 215 N. Y. 514.)

Obviously, the court of appeals believed that the people of the State of New York in adopting their constitutions had intended to place certain fundamental notions of right and justice beyond the reach of the legislative power, and that the due process clause served that purpose; but that in the hands of the people themselves these notions were legitimate subjects of change with the progress of social and economic thought. This view also explains the apparent paradox that the same words bear a different construction in the state and in the federal constitution. The situation is best understood when we say that the court in the name of due process enforced fundamental policies and not merely what the United States supreme court had designated as cardinal and immutable principles of justice.

This point of view should control the interpretation of much that goes in America under the name of constitutional law. The decisions enforcing so-called inherent limitations are among the most loosely reasoned in our entire case law. There is much talk about inalienable rights on the one side and about the police power on the other; as the case may be, either denunciation of the arbitrary will of the legislature, or disclaimer of judicial superiority of judgment or power of control; practically the only criterion that is suggested is that of reasonableness, and to talk of reasonableness, when we are in search of a rule of law is to offer us when we are asking for bread, I should not say a stone, but a piece of India rubber. From the point of view of legal

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science it would be difficult to conceive of anything more unsatisfactory.

But the point of view should be an estimate of constitutional organs dealing with law in transition. For nearly a century economic freedom had reigned almost unquestioned. Labor legislation was the most conspicuous manifestation of a new era of regulation of private business. The new legislation was in many respects experimental and badly worked out, some of it was premature. Legislative methods failed to command that degree of popular confidence which would be willing to dispense with further control if such control was available, and in America it was. The conservative sense of the community demanded a judicial check which had to operate under the guise of legal and not political control. The idea of a constitutional policy and corresponding rights and limitations was thus readily entertained not only by the courts, but by the great preponderance of public and professional opinion, and to a very considerable extent this opinion prevails today.

In fulfilling an essentially political function the courts were handicapped by two special difficulties: in the first place, freedom of contract was obviously not an unqualified right like freedom of religion, but necessarily required so many exceptions that in attempting to formulate it, it was impossible to avoid fluctuation and contradiction; in fact the entire concept is so vague as hardly to present a justiciable issue;—in the second place, the exercise of the judicial power was not called for until the very fact of legislative enactment showed that the strength of the constitutional policy was declining. Inevitably, therefore, this method of control created friction and dissatisfaction, increased perhaps rather than diminished by the consciousness that in a popular government courts must eventually yield to popular policies, and certainly increased by the indefensible narrowness of view displayed in some decisions.

Extreme indefiniteness however appears in the light of a wise avoidance of irrevocable conclusions, if we apply to this phase of constitutional law as a whole the test of political performance. The legal weakness of the labor decisions constitute their saving grace. No constitutional right is asserted without placing in

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convenient juxtaposition a saving on behalf of the public welfare. No rule has been formulated in such a manner as to embarrass an honorable retreat, and if an inconvenient precedent is encountered there is little hesitation in overruling it. Even the brief period of thirty years, during which the courts have enforced constitutional policies, has been sufficient to demonstrate that any apprehension of a permanent hindrance on their part to any phase of legislative progress is groundless.

Upon a large view, then, of our constitutional history we are impressed with the fact that in assigning a controlling function to the courts we have after all not altered the universal character of constitutional issues: in America as well as in other countries they are, in the main, issues of power and policy, and the conformity of legislation to fundamental principles of law is too technical and inconspicuous an issue to arouse attention or discussion. As a matter of theory the proclamation of due process as a paramount and mandatory requirement might perhaps have been expected to identify constitutional law with scientific canons of legislation, but practically it has had no such result. The number of cases in which such canons have been discussed is insignificant; and not infrequently courts have altogether failed to deal with the real principle involved and calling for protection. Upon a sober view of the relation of courts to statute law this is not surprising.

The common law is a system of principles and the great majority of these principles have had their origin and formulation in judicial opinions written with a single view to searching out the truth. Legislation cannot claim to be an expression of pure principle, but of necessity embodies a considerable amount of discretion, expediency and compromise.

Even where legislation is enacted to remove common law defects and to substitute a superior rule, the difference remains that the common law was put forward in the name and in the form of principle, while the statute is put forward in the name of the sovereign will and in the form of a command: "stet pro ratione voluntas." In England the courts, after a period of free construction which subordinated legislation at important points to principles of equity, came to accept acts of parliament

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loyally according to the letter of the legislative mandate and without questioning the validity of its underlying reason. Principles of legislation became subject to judicial cognizance only for purposes of interpretation, where the statute was ambiguous, and the principle of a clear statutory provision was entirely beyond judicial discussion. In practical effect this means that principles of legislation are without forensic or professional status or interest.

In America the theory of implied limitations altered this situation, but not nearly as much as might have been expected. The habit of enforcing implied limitations grew very slowly, and professedly remained confined to extreme cases; it was only the violation of a minimum standard of reasonableness or principle that would be deemed a justification for declaring a statute unconstitutional, and the courts never claimed a praetorian power of aiding, supplementing or correcting statute law. In the nature of things it will happen only rarely that a statute will fall below minimum standards, so that the courts will find occasion to set their own standards against those of the legislature. When they do so a judicial principle of legislation is at least by implication laid down; but it is obvious that with a scope of judicial review so limited the law reports can hardly be expected to be a repository of principles of legislation, as they are of principles of common law, and that a system of principles based upon judicial authority alone must be extremely fragmentary.

Under these circumstances it becomes impossible to identify scientific legislation with constitutional law. The fact however that American courts have undertaken to deal with the validity of legislation on general grounds remains an advantage which we should not neglect and which supplies us with material for study that is not available in other systems. The poverty of case law is offset to some extent by the greater significance of each case in the light of the history of which it forms a part. The operation of ordinary rules of law is difficult to trace, since the great mass of private acts and relations upon which they bear is wrapped in obscurity; the success or failure of principles of legislation appears however in the history and the enforcement of statutes, which are matter of public record. We may thus

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be in a position to substitute for the lacking authority of judicial decision, and sometimes to set against it, the irrefutable testimony of experience and of facts of common knowledge. The history of legislation will teach us more about its principles than judicial doctrines pronounced with regard to legislation. A few examples will illustrate this observation.

In the eighties of the last century a number of States undertook to suppress the oleomargine industry entirely. Instead of merely dealing with imitations of butter, they extended their prohibitory legislation to substitutes. This legislation was successfully contested in New York, but was sustained by the federal supreme court in 1887. According to commonly prevailing criteria we should therefore conclude that by preponderance of authority no fundamental principle of legislation is violated by outlawing a valuable article of food, if the legislation deems mere restrictive regulation ineffectual to stop fraudulent practices. Yet we find that with all other conditions remaining practically the same, this type of legislation has been unable to maintain itself, and notwithstanding the judicial support has disappeared from the American statute books.

A chapter from the history of gambling legislation tells a similar story. It is matter of common knowledge that stock and produce exchanges are used for purposes of speculation which is in effect gambling. Proceeding upon the theory that a large proportion of option sales and sales for future delivery are of this character, legislation has been enacted both abroad and in this country making these transactions altogether illegal. Illinois thus made it a misdemeanor to make options of purchase or sale of any commodity, and California placed a provision in her state constitution making void all contracts for the sale of shares of stock on margin or to be delivered at a future day. This legislation was likewise contested and again the supreme court of the United States sustained the sweeping prohibition both of the criminal code of Illinois and of the constitution of California. Again it was thus recognized on the highest authority that no fundamental principle is violated by the entire suppression of transactions which may serve valuable and legitimate interests provided the legislature believes that certain

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dangers to the public can not be otherwise successfully dealt with. Prohibition thus having been vindicated from the point of view of constitutional law, it is instructive to note its failure to vindicate itself by the test of practical experience. In order to protect legitimate business transactions it was found necessary in Illinois to amend the criminal code, and in California to amend the constitution, and the law was brought into harmony with the contentions that had failed to prevail in court. It is hardly necessary to add that prohibitory laws of similar type have long since disappeared from foreign statute books.

It is entirely proper to set against a doctrine of constitutional law resting upon a legal decision, even of the supreme court, the striking consensus of widely separated jurisdictions in abandoning policies imprudently adopted and which experience proved to be intolerable. Only a theory of judicial infallibility can continue to treat prohibitions thus discredited as valid forms of exercise of legislative power. Why, in the light of the history of legislation should we not accept the principle that functions and activities of genuine economic value must not be destroyed by reason of the possibility of their abuse where absolutely vital interests of the community are not at stake, but that the danger of abuse must be met by regulative or restrictive measures? This indeed is but a principle of common sense. It needs to be emphasized only because it failed to receive the supreme judicial sanction. And while in a sense obvious and commonplace, it may still be claimed for the principle that it has a more tangible content than mere phrases about liberty and property, reasonableness and the public welfare.

The history of the criminal enforcement of the Sherman law is likewise instructive. In 1890 Congress created the hitherto unknown offense of monopolizing an industry. It did not define the offense, nor has any one since been able to define it. Whether an organization like the Harvester Company is a contribution to the economic efficiency of the nation or a violation of the law of the land is a question which the Supreme Court takes two years to consider, and the erroneous private decision of which subjects to the risk of fine and imprisonment. Such

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uncertainty in a penal statute, the Supreme Court has held, does not render it unconstitutional. Common sense tells us that such legislation is contrary to sound principle, and history confirms common sense, for the criminal enforcement of the Sherman law, backed by all the financial and legal resources which a powerful government could command, has been an almost absolute failure. What success the government has had in enforcing the act, has been through the power of proceeding in equity which was an afterthought and almost an accident in the preparation and enactment of the law. And even this phase of the law is likely to be superseded by the more specific methods provided by the legislation of 1914. If the constitutions demand certainty and particularity in indictments, precisely the same principle demands common certainty in the statutory definition of an offense. The strong demand for a codification of the criminal law both in America and on the continent of Europe was largely inspired by the horror of undefined offenses which also found expression in the French Declaration of Rights of 1789. Unjust to the defendant, the vagueness of a criminal prohibition is also disadvantageous to the government, for the sense of the injustice of the law will lead both juries and courts to minimize or neutralize its effect, and will diminish the vigor and confidence of official enforcement. The testimony of authorities charged with the administration of labor laws is unanimous to the effect that generic requirements in factory acts are from this point of view undesirable. Again it is the success or failure of statutes, and not the ruling of a supreme court, that should determine the true standard of legislation.

It would perhaps be unfair to call the three examples from the history of legislation which I have given somewhat at length, typical cases. They are exceptionally valuable because they illustrate principles of legislation that have enforced themselves in spite of judicial decisions by the sheer force of their soundness; but to conclude that every sound principle must enforce itself automatically would be to assert that unwisdom or injustice cannot prevail in this world, which would be unwarranted optimism. But the examples illustrate the difference between a principle of legislation and a doctrine of con-

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stitutional law, and incidentally show which is theoretically as well as practically the more valuable.

The history of workmen's compensation in New York shows that sound principle may also prevail over judicial doctrine where the final outcome vindicates instead of disproves the validity of legislative action. In any event a pointed issue between principle and constitutional law is exceptional, because legislative good sense will as a rule keep statutes well above the lowest level of performance that courts will tolerate, and because the observance of superior and really adequate standards is not, and it should be added, as a practical matter, cannot very well be insisted upon by the courts. Inferior standards however undoubtedly account for the readiness with which courts have been in the habit of entertaining the plea of unconstitutionality.

It would be a profitable task to examine from this point of view the labor legislation that has appeared to American courts as inconsistent with constitutional rights. While the reasoning of the courts frequently remains unconvincing, and while they operate with doctrines or concepts that cannot stand close analysis or that sooner or later will have to be abandoned, it it also true that many of the statutes annulled hardly deserved a better fate than they met. Very generally labor legislation has failed in one of the most vital principles of sound legislation, namely in the proper correlation of the various elements of a complex situation. Reciprocal obligation is of the essence of employment. A statute enacted at the request of labor interests generally seeks to redress some injustice or grievance; but very often the practice which employers are forbidden to continue has some element of justification in the shortcomings of labor; and a mere one sided prohibition without corresponding readjustments leaves the relation defective with the balance of inconvenience merely shifted from one side to the other. Under such circumstances courts are much inclined to assent to the claim that there has been an arbitrary interference with liberty or a violation of due process, a claim which in that form is untenable. Thus the practice of paying coal miners accord-

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ing to weight ascertained after passing the coal mined through a screen in order to eliminate the inferior small size output, appeared to the miners as a grievance which they sought to remove by compelling the weighing of coal before passing it through the screen. This legislation has generally been declared unconstitutional as inconsistent with the freedom of contract; the real objection to the coal weighing acts was that, as the supreme court of Ohio pointed out, the former injustice to the miner was proposed to be remedied by another injustice to the operator whom the law sought to compel to pay the miner irrespective of the quality of work and product. Under the new constitution of Ohio expressly allowing coal weighing legislation, a new law has been enacted upon the recommendation of a commission which provides for the determination of a maximum permissible percentage of impurity, thus seeking to arrive at a fair compromise between conflicting interests; and this legislation the federal supreme court has recently sustained. (Rail River Coal Co. vs. Yaple, 236 U.S. 318.)

Within the last year the supreme court has been criticized for annulling for the second time legislation prohibiting employers from making membership in labor unions a ground of discharge. Probably the last word has not been spoken upon the sacrosanct nature of the right to "hire and fire," as it is called, but no sympathy should be wasted on legislation which seeks to protect a labor union without in the least considering the need of protecting the employer against the abuse of its power. Some time perhaps our legislatures will come to understand that a fair measure for the protection of the right of membership in labor unions involves the recognition of obligations and restraints, and not until then will the regulation of the right of discharge be presented to the courts upon its merits.

The supreme court has not yet passed upon the constitutionality of minimum wage legislation. In the present temper of the court toward social legislation for women a favorable decision is not unlikely; but we shall remain unenlightened as regards a minimum wage for men. Unfortunately, this issue, too, will be presented in an uncorrelated condition: the

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English coal mine minimum wage act provides for rules with respect to the regularity and the efficiency of the work to be performed, but a similar provision is lacking in American statutes. A minimum wage logically requires a minimum service or return, and without this element of reciprocity, it is impossible to judge fairly of the justice or injustice of wage regulation. The issue of abstract power is misleading and perfectly barren.

If correlation mean more carefully measured justice, what I should call the principle of standardization stands for the other main objects of law, certainty, stability, and uniformity. More particularly standardized legislation means above all three things: conformity to established scientific truth, a certain constancy in relations and in rates of progression, and the avoidance of excessive or purposeless instability of policy. I cannot here develop these ideas in detail. With regard to the element first stated, a purely practical observation must suffice: legislation has occasion to apply the conclusions of physical and social sciences; but a system of principles of legislation must recognize that the data of those sciences are foreign to its own province; a science of legislation should confine itself to two tasks: to work out methods and processes which will place legislators in possession of the fullest available information and facilitate the application of data thus obtained; and to find and establish the most available and effective modes of securing conclusions that have been established by other sciences, in the form of rules of law; the formulation of protected interests as legal rights is a purely technical problem which is of the essence of constructive jurisprudence, and to which thus far practically no systematic thought has been given. The training of a lawyer, while indispensable, is entirely inadequate for this task, as may be readily proved by the drafting defects of statutes "penned" by great judges and lawyers; and it is perhaps at this point that the greatest opportunity presents itself for new and fruitful work.

It is also necessary to guard against misunderstanding when stability of policy is named as one of the important aspects of standardization. Where policies are controverted, it may be

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plausibly contended that a ready response to the popular will is preferable to stagnation, and it is perhaps also true that frequent change is in some cases merely the consequence of the American habit of introducing new legislative ideas in the form of tentative statutes which require repeated amendment until a satisfactory form is found. The plea for standardization relates to cases in which instability serves no particular purpose. However controversial the main object of a bill, there are always matters incidental to it upon which there is no strong partisan feeling, and upon which the only legislative desire is to do the right thing. As to this there may be theoretical differences of opinion, but rarely any great practical difficulty in reaching an agreement. There is then every reason why this subsidiary and technical detail of statute law should be determined in a uniform manner, i.e., should be standardized. We should consider it absurd if every statute were to create its own judicial procedure for the litigation of controversies arising under it; yet to a very considerable extent this is done with regard to penal provisions and the machinery of administration, at least in state as distinguished from federal legislation. In France and Germany a simple executory clause is sufficient to make an existing administrative apparatus, together with a highly developed administrative code, available for the carrying of a statute into effect.

It is theoretically possible to standardize administrative clauses of statutes by framing them for each statute upon uniform principles, or better still, upon uniform models; but the simpler method is to codify such clauses as separate acts, by analogy to existing practice and procedure codes, and then incorporate them into statutes by express or tacit reference. Such separate enactment would concentrate upon technical provisions an attention which they rarely receive when they appear as the subordinate detail of the important principal subject matter of a bill, and when at the worst they lend themselves admirably to the perpetration of jokers, and, at the best, follow without much thought previous precedents. Where in exceptional cases, as e.g., in connection with the Sherman law, we can trace somewhat the ori-

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gin and growth of penal and administrative provisions, we discover that that part of the law as finally shaped is due far more to accident than to forethought. Even if a particular provision is not intrinsically objectionable, variation is intrinsically undesirable. If subsidiary policies are determined anew for each statute as a matter of habit or because no general rule is available, it means for the legislature the waste and wear of responsibility for new decisions, for the administration, the inefficiency which results from lack of consistent purpose, and for individuals affected, lack of uniformity and therefore something that approaches the deprivation of the equal protection of the law.

The standardization of penal and administrative clauses is indeed one of the most powerful safeguards of justice to individual rights. It is curious to observe that when we compare a particular statute with its enforcement, the administrative standard is more conservative than the legislative standard; while, on the other hand, the legislative standard is more conservative when it is divorced from than when it is incidental to a specific measure. This shows that considerations in favor of individual right will have the slightest chance when a particular policy is under discussion, and the checking influence of its application to personal cases is not operative. Where individual right is weighed against policy on general principles, a fairer and more even balance will be struck. For it will then appear, just as it will appear when sentence is to be pronounced in a particular case, that the carrying out of a controverted policy is not the last and only consideration in a free state, but that excessive powers and exorbitant penalties are not only unwise but unjust, and may violate a higher policy than the one that may be represented in a particular measure. That is why guaranties of individual right are placed in constitutions. The separate codification of administrative clauses will have a similar purpose and effect: it will constitute a statutory bill of rights.

The importance of this matter has been called to the attention of the American Bar Association which has authorized its committee on legislative drafting to prepare a manual of model clauses for draftsmen. This work has been begun and it ought to give a strong impetus to a movement toward this phase of

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standardization; its value will depend largely upon the amount of consideration it will receive, for many minds ought to coöperate to bring about acceptable results in legislation. The coöperation that is needed more than any other, is that of the National Conference of Uniform Law Commissioners, the body in which the most careful professional thought is brought to bear upon the discussion of legislative projects.

It is of course the exception rather than the rule that principles of legislation will thus lend themselves to codification or statutory formulation. The equal protection of the law, which is guaranteed by the fourteenth amendment involves the principle of adequate and carefully discriminating classification and differentiation: obviously, this is a matter upon which it is impossible to formulate general propositions of statutory force and character, but to which only an impartial and intelligent survey of a particular legislative problem in its entirety can do justice.

The courts which can control legislation only by annulling it are powerless to enforce the requisite standards, and they can deal effectually only with cases of gross abuse of the legislative power of classification. An examination of constitutional decisions makes it perfectly clear that the judicially enforced standard rarely represents the highest available or practical standard, and it would therefore be vain to look to the courts for adequate principles of legislation; it would be as reasonable to expect the common law to give us an adequate code of private conduct. By the very nature of its function the strictly judicial attitude of mind is not the one most favorable for dealing with complex legislative problems. Courts decide between contentions for the full measure of abstract rights carried to their logical conclusions, unaffected by the possible expediency of indulgence and concession; they deal with human relations in an atmosphere of controversy and extreme self-assertion; they touch life mainly at the point of abnormal disturbance. The function of legislation on the other hand is to prevent controversy, and is therefore dominated by the spirit of compromise and adjustment; it is for this reason that legislative rights are apt to be more qualified than common law rights. The re-

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sult is that the principle of judicial rule or justice is the minimum, the principle of legislative rule or justice, the maximum of reciprocal concession. In America this contrast is obscured and modified by a number of factors: the great authority and influence which judicial thought, particularly in constitutional matters, exercises over the legislature through its lawyer members, and which constantly tends to make the constitutional or minimum standard of rights the normal standard for purposes of legislation; the fact that after all the courts represent the highest type of training in our civil service while the legislatures do not; and the spirit of extreme jealousy with which the legislature guards public rights against the apprehended encroachments of privilege and of corporate power, and that has led it occasionally into considerable injustice to private interests. To estimate fairly the relative value of judicial and legislative action in developing principles of legislation, we should study conditions where both are at a fairly equal level of spirit and of performance; even in a matter which appeals so strongly to courts of justice as the allowance of a judicial remedy against administrative action, it will be found that the legislative rule laid down by the Prussian administrative code is more favorable to private right than the practice of American courts.

If it is true that principles of legislation can become operative only through the practice of legislation it should also be recognized that the knowledge, the painstaking care, and the restraint which their application involves, presuppose professional assistance in the preparation of bills, professional in the sense of being trained in the work of statute making, not merely trained in the common law. The establishment of drafting bureaus by state after state will be perhaps the most potent agency in creating high and uniform standards, provided they are permitted to develop and render service in accordance with the importance of their functions.

I am also convinced that here is a great field for constructive work by university law schools and departments of political science; without them the science of legislation must remain inarticulate; for all over the world drafting officials are too busy to elaborate fully the principles upon which they act. The books

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of Sir Courtenay Ilbert are the mere beginning of a literature. From the purely professional point of view of preparation for the practice of the law, this study has of course a narrower range of practical application than that of common law principles; but this defect is offset by the wider outlook that it offers, the quite special training in constructive legal thought which it affords, and the great intrinsic interest and importance of its material. It is moreover only by such a study that lawyers will learn to appreciate the fact that it is not judicial thought alone that produces and develops law.

It should not require many words to show the practical value of a recognized system of principles of legislation. Fully elaborated it would mean, that, given a clear understanding of the essential points of a policy, the work of translating that policy into the terms of a statute might be safely left to experts. The results would be a great economy of legislative time and effort; a diminished risk of technical defects, and of what are popularly known as "jokers," and a much greater facility in the working of the popular initiative, if it be thought desirable to continue or expand that form of legislation. The standardizing of legislative methods and provisions should also gradually raise the level of legislative performance and increase popular confidence in the legislature, and ultimately make for a reduction of constitutional provisions and restraints. There is a growing conviction that constitutional limitations are an evil, though as yet a necessary evil, and that the course of true progress is toward a flexible instead of a rigid system, a system of inherent instead of imposed guaranties, which will allow the mobilization of every legitimate legislative power in case of need. No great nation, nor for that matter, any live community, can afford to be tied by dead hands, or to have its policies mapped out generations ahead; but however great the emergency, a free people may well insist that whatever changes may be necessary shall be brought about under observance of that order and with that respect for right and justice which the world knows as law and which we happen to call due process. This is what constitutional government ought to mean, and this can be accomplished only by a system of principles of legislation.

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THE ATTEMPTED REVISION OF THE STATE CONSTITUTION OF NEW YORK

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The American people, especially in the eastern portion of the United States, are averse to political and social change particularly in institutions that have existed for a long period of time. A recent critic[1] of American life has the following to say as a reason for this attitude of the American people:

"Among the many characteristics which foreign observers have ascribed to Americans are two about which there has been little difference of opinion. We are good-natured and we are individualists. Sermons have been preached against our good nature, so we need not dwell upon it. Much more important is our individualism—our absorption in individual interests and our reluctance to undertake things in combination with our neighbors or through the government. That individualism is an American characteristic is proved by a number of familiar facts. Thus the phrase 'social reform,' which in other countries suggests comprehensive plans of state action, is still usually associated in the United States with the welfare work of private corporations, private endowed schools of philanthropy. . . . Again, the coöperative movement which has made such signal progress in Europe, is in its infancy here. Finally, socialism, the extreme antithesis of individualism numbers fewer converts relatively to the population in the United States than in any other country of the Western World. Our forefathers wrote their individualistic creed into our federal and state constitutions . . . . . As interpreted by the courts, a significance has been given to these constitutional rights that has

[1] Seager, H. R., *Social Insurance*, pp. 1 ff.

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seemed at times to make a fetish of the merely formal freedom of the individual. Thus it is not too much to say that Americans are born individualists in a country peculiarly favorable to the realization of individual ambitions and under a legal system which discourages and opposes resort to any but individualistic remedies for social evils."

Publicists and students of political science have long noted the weakness of the American federal and state governments in their reliance upon the theory of the separation of powers; such students have realized that the English system of cabinet government in which the executive is a part of the legislative branch of the government is in many ways superior to our own. This fact noted by students of government is just beginning to be observed by our law makers. Prof. Henry Jones Ford, in a notable article in *Scribner's* for January, 1911, attributes to the worship of Montesquieu's theory of the separation of powers, first promulgated in his *Spirit of the Laws* in the middle of the eighteenth century, a great share of the political corruption existing in our public life. To quote him in part: "It is the inherent defect of the Montesquieu scheme on the point of efficiency that first prompted the departure from it known as the Galveston Commission plan, the influence of which is fast expelling the doctrine from municipal constitutions. . . . As soon as the break begins anywhere it will spread everywhere in forms of state government just as it is now doing in forms of municipal government. The United States is now the only part of the world in which Montesquieu's doctrine still clogs the democratic movement of the age, and it is doomed to succumb to the insistent demand now made everywhere for efficiency of government. . . . The men now going out of our universities, the generations soon to take over the management of affairs, have escaped from the eighteenth century and its shallow philosophy, and with their gradual advent to power, the Montesquieu doctrine will be excluded from our state forms. . . . . It has lingered longest in the United States owing to the intense political conservatism which marks the national character and which is on the whole a salutary instinct,

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and that instinct may be trusted to make the impending reconstruction of our forms of government gradual and safe."

This belief in the individual at the expense of the state; the influence of Montesquieu's political philosophy of the danger of uniting the executive and the legislative branches of government; the innate conservatism of the American people—all these have lain like dead hands upon any attempts to change our state governments. Another factor which has been preventive of change is the fear of the people of giving too much power to the executive branch of the government. Bryce, in his "American Commonwealth," attributes this fear to the influence of Puritansim in its disbelief in man. Other writers have shown that this distrust in the governor and belief in the legislature were due to the continued conflicts between the colonial governors and the legislatures. Madison, in the convention of 1787, said that "the executives of the States are in general little more than ciphers; the legislatures, omnipotent." The governor could not initiate legislation and only had the power of the veto. Recently, however, the people have come to fear the legislatures and look upon the governor as the representative of the people. This has been due in part to disclosure of conditions in our state legislatures and in part to the attempts of state executives to obtain proper legislation and finding themselves blocked by the bi-partisan machinery of the legislature, have taken the initiative in forcing legislation. Several examples will illustrate this: the careers of Governors Folk of Missouri, Cummins of Iowa, Hughes of New York, and Wilson of New Jersey, brought to the people's attention the weakness in the administrative powers of government. Former Governor Hodges of Kansas has been advocating the commission form of government for the State. Advocates of simplicity in government and all others, such as the short ballot propagandists, who have attempted to reconstruct the state government, says Professor Beard of Columbia, have been accused of "attempting to lay profane hands on the Ark of the Covenant. They were met with shrill cries about the gods, the sacred oracles, the Elysian fields, the fathers; the separation of powers, and the

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bi-cameral system. From Montana or Wyoming came the solemn warning of the governor that the executive appointment of the state veterinarian smacked of monarchy."

That such reconstruction is bound to come is indicated by the present-day watchwords of efficiency and social service; by the discussion of the need of change by students of government; by the appointment of commissions in several States to study ways and means of improving the state government; and by the experience gained as a result of the commission form in our cities.

One cannot understand the proposed new constitution of the State of New York unless he knows that similar changes in state government are wide-spread and unless he is conversant with something of the recent history of that State.

Dating from the insurance examination in 1906 and the consequent election of the prosecutor, Mr. Charles Evans Hughes, as governor, the people of the Empire State came to realize that some changes were necessary in the character of their state political institutions. Governor Hughes found it necessary to go to the people themselves in order to bring into effect the laws and reforms which he advocated. The insurance investition disclosed a condition of corruption in the state legislature such as the public had long known to exist in its cities. Mr. Hughes was elected governor in 1906, and was re-elected in 1908, but did not serve out his term. As a result of the disclosures during the administration of Governor Hughes and the division in the Republican party, a Democrat, John A. Dix, was elected governor in 1910. The latter, at the time of his inauguration indicated his intention to return to the government of the fathers; declaring that he would live up to the separation of the powers and that there would be no encroachment by the executive upon the legislative branch of the government. As a result, such a reign of graft ensued as would have made the days of the *House of Mirth* blush for modesty. In 1912, there were three party candidates for governor, the Progressive, the Republican, and the Democrat. The latter nominated William Sulzer, who was elected. Then came his impeachment and

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the consequent seating of the lieutenant governor as governor. The investigators appointed by Sulzer as governor and the later impeachment proceedings disclosed the fact that the bi-partisan machine was still in existence. There was a consequent reaction against the Democrats and the election of Mr. Charles A. Whitman, the district attorney of New York City, as governor followed.

Both Republicans and Democrats in their platforms declared that if a new constitutional convention should be decided upon by the electorate, they would introduce a shorter form of ballot and would generally simplify the government in order to bring about greater efficiency. The Democrats expected to elect a majority of the delegates to the constitutional convention, due to the character of the administration of Governor Glynn and the split in the Republican ranks. As will be readily recalled, there was a reactionary wave throughout the country, and as a result Mr. Whitman was elected as governor of the State of New York.

The question of a constitutional revision should not have come up until 1916, but it was decided by a small majority to have a convention for that purpose. As a result of the change in sentiment, 116 Republicans and 52 Democrats were elected to the constitutional convention. The delegates chosen belonged to the conservative, rather than the so-called progressive, wing of the party. Among the Republicans the best known were Senator Elihu Root, who was elected president of the convention; former Attorney General George W. Wickersham, who became floor leader of that party; former Mayor of New York City Seth Low; President Jacob Gould Schurman of Cornell University, who was one of the vice-presidents; former State Senator Edgar T. Brackett, leader of the up-state forces; and Mr. William Barnes, Jr. Among the Democrats, the leaders were former Justice of the Supreme Court, Morgan J. O'Brien; former Lieutenant Governor William F. Sheehan; Delancey Nicoll and John B. Stanchfield, famous as corporation attorneys; Lieutenant Governor Robert F. Wagner, and Alfred E. Smith, Speaker of the Assembly, leaders and representatives

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of the Tammany forces. No Progressives were elected. There were 134 lawyers out of a membership of 168 and the majority of these were of the conservative wings of their respective parties. Several were men of national reputation.

The convention was organized after the plan of congress and committees were appointed to report later to the convention. Some of the chairmen of the committees were William Barnes Jr., chairman of the committee on legislative powers; Seth Low, chairman of the committee on cities; former Secretary of War Henry L. Stimson, chairman of the committee on finance; Mr. Louis Marshall, chairman of the committee on conservation; and George W. Wickersham, chairman of the judiciary committee. These committees held hearings which were open to proposals by the public either through representatives or in person.

Many of the articles in the revised constitution were either drawn up or suggested by certain organizations, such as the Short Ballot organization, the American Association for Labor Legislation, the City Club of New York City, and the Bureau of Municipal Research. The latter published a summary of the entire administrative bodies of the State in a volume entitled, *The Government of the State of New York: Organization and Functions.* It also arranged for several public men to appear before the convention. Among those who appeared were President A. L. Lowell of Harvard University; former President William H. Taft; John J. Fitzgerald, chairman of the congressional committee on finance; Dr. Frederick A. Cleveland, an authority on the making of a budget; and President F. J. Goodnow of Johns Hopkins University. The members of the convention were provided with a résumé of all parts of the proposed constitution; with various proposed amendments of the last ten years; with a digest of all other state constitutions; and with pamphlets giving information respecting the organization of city government; and the various expenditures of the State and the functions of its officers; and with such other data as would enable the members of the constitutional convention to understand what the problems were and how they were to be met. The convention opened April 4 and completed its work

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September 4. Some seven hundred and twenty-five amendments were proposed. Of these some six hundred failed in committee. In all, only thirty-three amendments were finally adopted. The majority of the amendments that were finally accepted were adopted by members of both parties. The final draft was adopted by a vote of 118 to 33. The opposition was composed of up-state Republicans and Tammany Democrats. The former were opposed to the constitution on the ground that it weakened the power of the legislature; the latter, because they claimed that the home rule provisions of the new constitution were "unsatisfactory."

The most unique provision of the revised constitution was that which deals with the executive. As has already been shown, the chief weakness in structure in our state constitutions is that which has to do with the functions and powers of the executive branch of the state government. The powers and functions of the governor are found in Article IV of the revised constitution. The governor's salary was increased from $10,000 to $20,000 a year. This article further provided that in case the office of governor be vacant, or during impeachment proceedings, the governor should be succeeded by the lieutenant governor. It further provided for a regular succession to the gubernatorial chair by making the temporary president of the senate and the speaker of the house successors respectively, when that office might be vacated by the inability of the lieutenant governor to act.

On the first day of January, 1915, there were 152 departments, bureaus and commissions that constituted the executive branch of the state government. Many of these overlapped each other in jurisdiction and conflicted in operation. The number of officers gave opportunity for corruption to the machine politician and the spoilsman. No one knew exactly what the functions of each of these boards and officials were. Article VI of the revised constitution reduced the number of elective officials from seven to four and created seventeen general departments. It forbade the legislature to create any new general division outside of the departmental system outlined in the constitution. The only elective officers named by this article

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were the governor, lieutenant governor, comptroller and attorney general. Under the old constitution there was really a seven-headed government. None of the members of the governor's cabinet was responsible to the governor. It was hoped by this new provision to bring about a responsible form of government. The article providing for this change in government was adopted by a vote of 125 to 30 in the convention. The commissioners of departments, such as the department of public utilities, conservation, civil service, and labor and industry, were to be appointed by the governor, by and with the advice of the senate. It was thought that as these departments had legislative and judicial functions they should not be considered purely as executive departments. The department of education was to have a head as formerly, and he was to be appointed by the state board of regents.

It was hoped by the concentration of power in the executive department to bring about the following results:

1. A great saving in taxes by the elimination of unnecessary boards or commissions.

2. By decreasing the number of departments almost ten-fold, it would increase their responsibility to the governor, whose power of appointment and removal would have been greatly enlarged.

3. It would provide a system of large departmental officers to whom the governor could look for aid in making the budget and to enforce economy in expenditures.[2]

"The functions of these departments are so classified that there shall be no duplication of activity by two or more departments relative to the same subject."[3]

All appointed heads of departments might be removed by impeachment in the same manner as the governor, or by the senate by a two-thirds vote of all the members elected thereto. The officials and boards appointed by the governor might be removed at his discretion.

[2] See article by Frederick C. Tanner, chairman Committee on Governor and other State Officials, N. Y. *Times*, October 17, 1915.

[3] "The Revised Constitution."

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All students of government are agreed that a scientific budget system is a *sine qua non* of efficient government. The system adopted by the new constitution was necessarily a compromise. The establishment of such a system was worked out by the Bureau of Municipal Research under the guidance of Dr. Frederick A. Cleveland. Under the former system of appropriations, the estimates for the next year were made up by the 150 boards or commissions. They were sent to the legislature where they were considered privately in committee rooms and were brought into the legislature during the last days of its session and were hurried through. In this way millions of dollars were spent without the men who voted for the bills appropriating such millions knowing for what they were voting. Under the new system, the estimates of all administrative departments were to be first submitted to the governor and then revised by him. He is to formulate a budget showing how much money is needed; where it is to come from; with a balance sheet of the State's resources and liabilities and statements of the expenditures of past years. This budget must be transmitted to the legislature not later than the first day of February. He and his departmental heads may appear either independently or on call of the legislature to explain or defend items contained in the budget. The legislature can not increase, but may reduce or strike out items for purely administrative purposes. The governor may amend items as he sees fit until the legislature has taken final action on the budget, and he may veto items appropriating moneys for the legislature or the judiciary. This would be a complete executive budget were it not for the provision that the legislature may add new items to the governor's proposals by special law subject to the executive veto; also it extends only to appropriations for state administrative purposes. It leaves the so-called "pork-barrel" appropriations outside of the budget. The constitution tried to prevent the waste due to such appropriations by making a provision that hereafter no public money should be appropriated for the construction of any work until the plans and estimates of the cost of the work were filed with the superintendent of public works, together with

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a certificate by him as to whether or not, in his judgment, the general interests of the State then required that such improvements should be made at the expense of the State.

Another proposed financial reform was that which had to do with the payment of debts contracted for public works. Twenty years ago, the State of New York had comparatively no state debt. Today the State has a debt of $186,000,000 and a contracted authorized debt of $231,000,000. The custom has been to issue bonds for the building of public works. The new plan contemplated the issuance of serial bonds to replace the old sinking fund system by which a loan was not paid off until the end of the period of years for which it was issued. With serial bonds if the issue be for twenty years, one-twentieth of the issue must be paid off each year. The control of the vast sinking funds gave an immense political power to the official having charge of them. He could invest in the securities of any town, village or city he wished to favor. It has been estimated that if the present canal debt of $118,000,000 had been issued in serial bonds instead of in sinking fund bonds the State would have been saved $46,000,000 in the cost of settling that debt and interest. The proposed constitution gave authority to refund present sinking fund bonds with serial bonds and it has been estimated if the canal debt be thus refunded the State will be thereby saved $30,000,000. Under this provision of the constitution the life of bonds shall run no longer than the estimated life of the proposed improvement.

Judiciary. Article VIII of the constitution deals with the judiciary. It was claimed by the adherents of this article that it would simplify judicial procedure. The chairman of the judiciary committee in the convention was former Attorney General George W. Wickersham. In a letter to the New York *Times* under date of October 30, 1915, he said:

"Among the most serious problems before the convention were those which affected the administration of justice in the State of New York. They involved questions of procedure and questions of judicial organization. They required a study of methods of removing just complaints of delays—undue delays,

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and unnecessary expense in the administration of justice. . . . The Judiciary Article, for example, received 135 affirmative votes and only 3 negative votes. Among the former were those of lawyers of every class."

Dr. Lyman Abbott said of this article:[4]

"The new constitution directs the legislature to adopt a simple code, to make no changes in it for a space of five years and thereafter only every five years, and to make such changes only on the report of a commission appointed to report what changes, if any, are necessary, but the courts are empowered to make such modifications and amendments as they deem necessary. This amendment secures two objects: first, simplification in legal procedure; second, that simplification worked out in its details by experts upon a well-considered basis.

"The new constitution further reduces the number of appeals, makes some increase in the number of judges, especially in New York City, where the courts have found it impossible to keep pace with the accumulating business, and adds one provision, which has been grossly misreported, but which, it seems to me, should commend itself to any one who is at all familiar with legal procedure. To relieve themselves of the burden of taking detailed testimony in cases tried before the court the judges have long exercised the right to appoint referees to take such testimony and report the facts, with the testimony, to the court for its action. These referees and the commissioners similarly appointed by the courts to conduct condemnation proceedings have been paid by fees. As every session brings a fee to the referee's pocket, he has at least no interest to expedite the proceedings and reduce the number of sessions. During the year 1914 there were 1700 appointments of referees in New York City alone. . . . The fees of those appointed for condemnation proceedings amounted to nearly three-quarters of a million dollars.

"The new constitution authorizes the legislature to create, in the place of these referees, commissioners paid by salaries,

[4] N. Y. *Times*, October 24, 1915.

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who will exercise substantially the same functions as the referees paid by fees. These commissioners are not to be allowed to engage in the practice of law while they are fulfilling these quasi-judicial functions."

"The legislature may confer upon any inferior local court power to try without a jury offenses of the grade of misdemeanor," and may "establish children's courts, and courts of domestic relations. . . . In the exercise of such jurisdiction such courts may hear and determine such causes with or without a jury, except those involving a felony."

Home Rule. Provisions were made in the revised constitution for granting to cities a limited amount of home rule. The committee, of which Seth Low was the chairman, was aided in its drafting of these provisions by several outside organizations, notably the City Club of New York City, the Municipal Governments Association, and the Conference of Mayors of the State. As in the case of many other provisions, those dealing with city government are compromises, and as is usually the case with a compromise, they satisfied neither side.

Home Rule. ARTICLE XV. "Every city by this article is granted exclusive right to manage and regulate and control its property, affairs, and municipal government, subject to the power of the legislature to enact general laws applicable alike to all cities. Cities are empowered to fix the number, power, and pay of all employees of counties situated within a city, except in the district attorney's office and in courts of record.

"Cities are empowered to amend or adopt new charters, subject to the power of the legislature to reject any charter amendment which changes the framework of the city government or makes restrictions as to contracting debts."

"No laws may be passed by the legislature applying to any one city, except when those laws deemed peculiar to one or more cities, have been submitted to the vote of the cities affected. The legislature may grant additional power to the cities. The powers of the legislature to pass laws regulating matters of state concern, as distinguished from property affairs and municipal government, are not restricted." In 1894, the constitution of that

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year established what was known as the suspensive veto. This provided that in case of special legislation for a city, the mayor had the power of veto, but it required the legislature to re-enact the measure before it became law. The home rule provisions are steps far in advance of those of 1894. They provoked a great deal of opposition.

Similar home rule provisions were enacted regarding counties. The chief was that the legislature may not enact any special legislation except at the request of the local board of supervisors.

Conservation. ARTICLE VII. The apparent purpose of this article was to preserve the forests and other natural resources of the State. It provides for a commission of nine members, similar to the state board of regents, one from each judicial district. The commissioners are to be appointed without pay for terms to expire in nine successive years; their successors to be appointed for terms of nine years each, one of whom shall reside in each judicial district. This department is to protect the forest and game preserve of the State; to aid in "preservation, prevention of pollution and regulation of the waters of the State, the protection and propagation of its fish, birds, game, shell-fish and crustacea, except migratory fish of the sea within the limits of the marine district."

Attempts have been made by commercial interests to gain control of the forests of the State. It is claimed by the chairman of the committee that drew up this article that it would have preserved the forests. A provision is made that the lands of the State constituting the forest preserve shall be forever kept as wild lands. "They shall not be leased, sold or exchanged or be taken by any corporation, public or private; nor shall the trees and timber thereon be sold, removed or destroyed." The department of conservation is empowered, however, to remove trees for purpose of reforestation.[5]

Taxation. ARTICLE X. The revised constitution guaranteed that the power of taxation shall "never be surrendered, suspended or contracted away except as to the securities of the State or a

[5] For discussion of this article see paper by Mr. Louis Marshall, chairman of the Committee on Conservation, N.Y. *Times*, October 31, 1915.

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civil division thereof. Hereafter no exemption from taxation shall be granted except by general laws and upon the affirmative vote of two-thirds of all the members elected to each house." The legislature is directed to provide for the supervision, review and equalization of assessments. Real estate assessors are to be chosen locally, but the legislature may provide for the assessment by state authorities of all the property of designated classes of public service corporations. The county is made the unit of taxation. This article, together with the sections dealing with apportionment, were to be voted on separately by the electorate. One purpose of the taxation clauses, it is claimed by supporters, was to give state control over taxation and thus prevent wealthy individuals from claiming two different residences and thus to "swear off" their taxes; another is to empower the legislature to vest in the state board of tax commissioners the assessment of the real property of public service corporations.

Suffrage. The new constitution provided for an amendment requiring a special registration not more than five months before the day of the election and the oath of such electors that they are engaged in a regular occupation which necessitates their absence from the county on the regular days of registration. Regarding woman suffrage, the legislature had agreed to submit the amendment granting woman suffrage to the voters. The constitutional convention simply made this an extra amendment to the constitution to be voted upon separately. If the clauses were not adopted, the suffrage requirements remained as they were in the constitution of 1894.

Bill of Rights—Additions. 1. A defendant charged with a crime punishable by not more than five years' imprisonment is permitted to waive indictment and jury trial. The purpose is to obviate delays in judicial procedure.

2. A person accused in any criminal case shall have the right to at least one appeal.

3. Where condemnation proceedings are instituted by a civil division of the State, compensation shall be paid for the seizure of property unless the supreme court after hearing because of public necessity shall otherwise direct.

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4. Power is given to the legislature to provide for compensation for death or injury from occupational diseases.

Future Amendments. This question was discussed by Mr. William Barnes, Jr., chairman of the committee on legislative powers. He said in a speech delivered at Albany, that the constitution should prohibit any future amendments by the legislature for a period of twenty years, when a new convention should be called for such purpose. He later proposed in the convention such an amendment making the period of years ten instead of twenty. This failed.

Clauses in the constitution provided for legislative initiative of proposed amendments. They required that the proposed amendment should be printed and be upon the desks of the members in its final form for at least five calendar days before agreement thereon. It also provided for the consideration of the proposed amendment in joint session of the two houses. After such conference, the proposed amendment should be considered and acted upon by each house separately. It was hoped to arouse public interest before the passage of any amendments by the legislature. It was then to be voted upon by the people before it became a part of the constitution.

Social Legislation. The only provisions for social legislation in the new constitution were those which permitted insurance in case of injury or death due to occupational diseases; those which permitted the establishment of children's and domestic relation courts and those which said that the legislature might enact legislation regulating or prohibiting manufacturing in tenements. The committee which had charge of labor legislation refused to enact clauses in the Bill of Rights permitting old age pensions and other similar legislation. Mr. William Barnes, Jr., proposed that minimum wage legislation be constitutionally prohibited. This was voted down at the request of George W. Wickersham, the floor leader of the Republicans in the convention. The state labor leaders desired that there be included in the Bill of Rights a clause enacting substantially the decision in the Mulligan case: that no military tribunal should "exercise jurisdiction over a civilian unless engaged in military or naval service while the regu-

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lar constituted state courts are open to exercise justice." This clause was reported to the convention but was stricken out on the recommendation of the chairman of military affairs by a vote of 65 to 50. Former Chief Justice Cullen of the court of appeals in a letter to the voters of the State declared that "the removal of a stick of timber is made part of the fundamental law, while the liberty of the citizen is declared to be sufficiently guarded by the order of a general . . ." He further said:— "The failure of the constitution to forbid the trial of civilians by military tribunals after the debate on the subject will be urged in every court where the questions arises as proving that the people did not intend to prevent the judiciary from authorizing such trials should it see fit, and that the guarantee of jury trial must be considered subordinate to such power."

Other Amendments. Amendments were passed increasing the pay of the members of the legislature from $1500 to $2500 a year with railroad fare; arranging for publication of the debates of the legislature; substituting the federal census for the state census as the basis for fixing the boundaries of legislative districts; giving the legislature power to convene of its own motion for the removal of a justice of the court of appeals or of the supreme court; and allowing the assembly to convene of its own motion for impeachment. The convention refused to adopt the suggestion of Mr. Barnes that the legislature should be prohibited from passing under the police power any bill which should be considered "unreasonable;" and also the suggestions that the justices of the courts should be appointed and that the pardoning power be placed in the hands of a state board of pardons.

REASONS FOR OPPOSITION TO THE CONSTITUTION

1. *Labor Opposition.*[6] A state conference of organized labor, held in Albany, October 4, at the call of the State Federation of Labor, unanimously agreed to oppose the revised constitution. The State Federation of Labor sent out hand-bills to its members

[6] See pamphlet published by New York State Federation of Labor, "Reasons for Voting 'No' on the Revised Constitution."

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advising them to vote against all questions to be submitted in regard to the constitution except that amendment which would permit woman suffrage. The labor unions were particularly opposed to the new constitution because at the conference of the State Federation of Labor held May 24, eight amendments were asked of the constitutional convention, and none was adopted. What the labor men particularly requested was a labor disputes act similar to the trade disputes act of Great Britain; they also asked for old age pension acts; for ample power to protect the health, labor and sanitary conditions of men, women and children working in factories; and a state fund to insure employers against the risk of workmen's compensation; and that commissioners of the labor department and the compensation commission be constitutional officers. What caused the ire of the labor leaders was the refusal of the convention to include in the Bill of Rights provisions that the writ of habeas corpus should never be suspended and that military tribunals[7] should not exercise civil or criminal jurisdiction over citizens while the regularly constituted state courts were open to administer justice. The recent history in West Virginia, where the supreme court of that State permitted strikers to be tried by military tribunals was especially emphasized by the laboring men and by former Chief Justice Cullen of the court of appeals of New York State.

The committee of the allied boards of trade of Brooklyn drew up a brief stating their reasons for opposition to the proposed constitution. This was sent out by the Central Labor Union of Brooklyn, advising their members not to vote for the constitution. It emphasized the suspension of the writ of habeas corpus during times of rebellion and invasion; the danger of the increased power of the executive without any redress by the electorate except at the expiration of the term of the governor; the increase in salaries of judges, governor and members of the legislature; the creation of an unpaid conservation commission controlling the entire natural resources of the State. This pamphlet calls

[7] See Brief of the Committee of the Allied Boards of Trade of Brooklyn, prepared by Cornelius M. Sheehan.

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the provisions of the constitution establishing home rule for cities "the home rule gold brick," and states that "the basic evil of the present and proposed constitution is the difficulty of amending them, which seems purposely designed to prevent the adoption of progressive policies, and the one thing necessary for constitution making is the removal of the difficulties in the road of amending them." "It is a monstrous absurdity," continues the author of this brief, "in the twentieth century to have a constitution that can only be amended after two successive legislatures have given permission to submit to the people."

The Attitude of the Progressive Party and Progressive Leaders in the Two Old Parties. Mr. John J. O'Connell, New York county chairman of the Progressive party, in a debate with Ex-Secretary of War Henry L. Stimson and Frederick P. Tanner, chairman of the Republican State Committee, gave as a reason for his opposition "the concentration of power without concentration of responsibility." He attacked the budget on the ground that it was dangerous and ridiculed the idea of the governor being permitted to appoint members of the legislature to executive offices while they remained members of that body. He further declared that making "the public service commission a constitutional body, precluded obtaining home rule for the city."

Mr. George W. Perkins, national chairman of the Progressive party, sent an open letter to Mr. Root giving his reasons for opposition. This letter was inserted as an advertisement by Mr. Perkins in all the leading New York papers, and was sent broadcast throughout the State. This advertisement is said to have cost Mr. Perkins the sum of $25,000. He attacked the short ballot; the judiciary; the power of the governor; the increase in salaries of the members of the legislature; the power to appoint members of the legislature to office; and stated that the provision in the constitution forbidding the creation of new executive departments was particularly dangerous in that it prevented the creation of a department of markets, a means by which the high cost of living could be decreased. He further declared that the article on conservation took away from the State the regulation of its marine fisheries.

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A citizens' committee to oppose the proposed constitution had full page advertisements in the New York papers. This committee gave seventeen reasons for its opposition to the constitution. The membership of the committee gave weight to its opposition. It was composed of John J. Hooper, former Independence League candidate for president, and a city official of New York City as chairman; Rabbi Stephen S. Wise, of the New Synagogue; Dr. Frederic C. Howe, Immigration Commissioner to the Port of New York; John J. Murphy, Tenement House Commissioner of New York City; and Amos Pinchot, vice-chairmen.

Opposition of Tammany Hall. Tammany opposed the home rule provisions declaring that they were not wide enough and also the clause in the constitution which would prevent the representation from New York City being larger than that of the rest of the State. Tammany Hall hoped that if the proposed constitution failed it would carry the State in 1916 and so gain control of the new constitutional convention. The New York *Times* of Monday, November 1, stated that the executive committee of Tammany Hall sent out pamphlets to 151,000 registered voters advising them to vote "No" on all three questions regarding the constitution and leave the space blank in regard to the woman suffrage amendment.

Opposition of the United Real Estate Owners. Owners of real estate in New York City have an organization representing an assessed valuation of from $300,000,000 to $400,000,000. They opposed the following clauses: (1) permitting the publication of the debates of the legislature; (2) giving the legislature power to regulate or prohibit tenement house manufacturing; (3) the budget; (4) increasing the power of the legislature in taxation; (5) instructing the legislature that city and county debts might not be contracted for a period longer than the probable life of the work which they were to cover; and lastly the entire article permitting home rule for cities.

The Opposition of the Civil Service Forum. The Civil Service Forum is an organization composed of employees of the city government of New York, namely, policemen, firemen and others

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in the civil service of the city. This organization claimed that the constitution threw the civil service into politics by placing the power of changing the charter and of reducing salaries into the hands of the board of estimate.

Opposition of the New York City School Teachers. President Churchill, of the New York board of education, advised teachers to vote against the proposed constitution on the ground that lawyers whom he had consulted disagreed regarding the powers conveyed in the home rules provision of the constitution. The question at issue was whether or not education was taken by these provisions from the control of the State and given to the city authorities. President John H. Finley, of the University of the State of New York, maintained that education was still in the control of the state education department. The teachers themselves feared that if control of education were given to the city authorities, the board of estimate of New York city would have power to reduce salaries at will.

The Opposition of the Up-State Republican Leaders. In the convention there were two distinct parties; the up-State representatives, styled by the newspapers "the reactionaries," and the more progressive element known as "the federal crowd." This distinction arose from the fact that the second group wished to increase the power of the executive at the expense of the legislative branch and to increase the power of New York City at the expense of the up-state constituency. The former group was composed of such up-state leaders as Senator Edgar T. Brackett, of Saratoga, and Senator E. R. Brown, leader of the state senate. The latter protested against the constitution because of the autocratic power vested in the governor; against budget making as an executive act; against "stripping the legislature of its powers; and depriving the senate of the right of confirmation of executive appointments; and finally against the extravagance of the creation of new and unnecessary offices. The scheme of the new constitution," he declared, "is extravagant as the mandatory expenses amounted to a fixed charge of at least $500,000 per annum, including an increase of the governor's salary from $10,000 to $20,000; three additional supreme court judges in

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the city of New York, $50,000; five county judges in the larger counties, $50,000; 21 senators and assemblymen, $201,000; increase in printing senate and assembly debates, $50,000; railroad fares of legislators, $10,000; three additional judges of the court of appeals, $41,000.

In the convention Senator Edgar T. Brackett was the leader of the party who wished to keep things as far as possible as they were. He opposed granting any home rule to the city of New York, and was in favor of decreasing the power of the executive. He said in the convention: "I have been an active politician for many years, and I have closely observed the way things are done by the so-called machine. But let me tell you that more invisible influences have been at work for this proposition than have ever been exerted in the legislative and political history of this State in fifteen years. I believe the question whether we shall continue to be a democracy is involved in this discussion."

These expressions from the up-state leaders is indicative of the feeling of the old-time legislators that any increase in the power of the executive smacks of monarchy, and any increased power granted to municipal government is a blow at representative government.

As an example of the more radical opposition to the constitution, let me quote the statement of Rabbi Stephen S. Wise, of New York City, in his speech delivered in Cooper Union:

"I protest against this stealing of the commonwealth. It is infinitely more important than the stealing of a little money from the state treasury. It must be prevented, just as the theft would be. The new constitution is absolutely undemocratic. Mr. Root privately and personally conducted the convention that framed it. It is not only undemocratic, but anti-democratic. Mr. Root does not know what democracy is. If he does, he is afraid of it. . . . . Why has the cause of good government made such slow and halting progress during the last generation in American cities? Because the people rightly distrust the men who presume to stand in the foreground for the so-called battle for good government. After these men have fattened on

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franchises and monopolized public privileges, they presume to urge the public that their lesser affairs be economically administered. The framers of the constitution do not in the first and last place represent the public interest."

The adherents of the constitution, similar to the opponents, stormed the State with pamphlets. The committee for the adoption of the constitution, with Robert S. Binkerd, secretary of the New York City Club, as secretary, sent out pamphlets answering those of the opponents to the constitution. Some of these are entitled, "The Truth about the Conservation Article," "To Democratic Voters of the State of New York," "Saving the State's Money," "Responsible Government, Four Speeches on the Proposed Constitution by Elihu Root," "Labor and the Proposed Constitution," "To Friends of Education, Why the Constitution Should Be Accepted." Some of the members of the committee belonging to this organization were former ambassadors: Joseph H. Choate; Andrew D. White, and David J. Hill; John G. Milburn; George Eastman; Frank A. Munsey; Nicholas Murray Butler; and former chief justice of the court of appeals, Charles Andrews.

A summary of their conclusions in favor of the constitution are, that it will:

1. Go far toward the abolition of invisible government.
2. Restore order and simplicity to the administrative organization of the State.
3. Produce great economies in the cost of government.
4. Secure speedier and less expensive justice in private lawsuits.
5. Grant enlarged powers of local self-government to cities and counties.
6. Improve the legislature and legislation.

It also had large half-page advertisements in the New York papers, advising the people to vote in favor of the constitution. The New York *Evening Journal* had an editorial, entitled "Who Spent a Quarter of a Million Dollars on this Little Collection of Circulars? What Generous-hearted, Whole-souled Gentlemen Supplied so Much Money to Enlighten the Public?" The atti-

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tude of the *Journal* and the New York *World* undoubtedly influenced a large number of the unthinking to vote against the constitution. The organization for the adoption of the constitution claimed that $150,000 had been spent by their opponents in advertising, while they had spent only $30,000 themselves.

To give in brief the reasons for the failure of the constitution to be adopted:

The constitution failed of passage because of its radical changes in government; it was not conservative enough for the old-time believer in the theory of the separation of the powers; nor radical enough to suit the laboring men and the progressives. They say that "politics makes strange bed fellows," and more than once in the history of politics may be seen the alignment on one side of the ultra-conservatives and the ultra-radicals; the reactionary reputations of many of the leaders of the convention militated against its acceptance by many who were progressively inclined, in spite of its many good features; the feeling of Tammany Hall that they might carry the State in 1916 and so obtain control of a new constitutional convention; the opposition by the city employees of New York City and the natural opposition of the New York State farmers in that it increased greatly the salaries of many of the state officials; the fact that it had to be voted upon as a whole rather than by piece-meal as in the recent Ohio constitution.

In conclusion: The constitution is indicative of the tendency in recent constitution making: (1) of the disappearance of the distinction between statutes and constitutional amendments; (2) of the increasing power of the executive over that of the legislature; (3) of the establishing of a budget system; (4) of the increased power given to cities of controlling their own government. It is more conservative than some recent constitutions, as it does not change greatly the method of amendment, and does not give any power to the people of initiating legislation. Although the constitution as adopted by the convention failed, the expense it involved was worth while because of its educational influence upon the people of the State and because the new constitutional convention may, if its delegates are wise enough, learn from the mistakes of the recent convention.

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In closing, let me quote the words of Prof. Charles A. Beard, of Columbia University, a progressive political scientist: These were written shortly before the vote upon the constitution. "It would be a work of superrogation to discuss the merits of this constitution. Its provisions speak for themselves. The advocates of the short ballot and of administrative re-organization have received a large measure of consolation—more in fact than they had reason to expect. The champions of scientific budget making have achieved a substantial gain in the governor's initiation of the administrative budget whether it becomes a matter of form will depend on the character of the new governors. In breaking down the rigid separation of the governor and his cabinet from the legislature and admitting them to the floor of the house—a system of interpellation may be established which will contribute powerfully to efficient and responsible government and will open up undreamt possibilities in politics. There is plenty to be said in criticism, but another time would be more appropriate, although one can not forbear mentioning the continuation of the gerrymandering of New York City."

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LANGUAGE AND THE SENTIMENT OF NATIONALITY

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The nineteenth century, it is a commonplace to remark, witnessed a notable revival of nationalistic sentiment, the germs of which go back to the eighteenth, and the political consequences of which are in considerable part still outstanding. The emancipation of the Balkan States, the union of Italy, and the consolidation of Germany, were substantial, though incomplete, realizations of nationalism. The Germanization of Austria-Hungary, which had seemed inevitable, was brought to a halt by the national revival of Slav and Magyar. And today, not to mention the Irish situation, Eastern Europe is fairly alive with smaller nationalities seeking to gain or to maintain autonomous development. Nationalism, in spite of, or rather because of its being so largely a matter of sentiment, is the most active force in European politics. The dynastic system, certainly, is only a superficial relic of a past reality; loyalty to a dynasty, except as it is identified with nationalism, has lost its former significance. And on the other hand, a socialistic brotherhood which shall rise superior to the bounds of nationality is a dream of the future.

Some writers, it is true, believe that the force of nationalism is exaggerated, that the dominant issues now are, some say economic, others those of democracy. No doubt in some of the more recent national movements democratic and nationalistic aspirations are combined, but the latter are more intense and have by far the stronger popular hold. The economic issues too are also nationalistic. When it is affirmed that the present war is in the last analysis a conflict over trade expansion, it cannot be meant for example that what the Germans want, and feel themselves thwarted in, is merely expansion of their trade, more opportunities for individual Germans, but rather that they

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desire spheres where they may develop trade as Germans, where they may maintain and extend their German nationality, instead of submerging it in that of others. Prof. Hans Delbrück emphasizes that "colonial policy must be dictated not merely by commercial but rather by national interests," and adds "The first proviso for a colony which aspires to be an assistance to Germany is the absolute supremacy of the German language."[1] No estimate of ultimate causes can eliminate the element of national jealousy, and as for the immediate occasion of the war, that is most obviously of nationalistic character, the conflict between Austria and Serbia growing out of the Pan-Serbian agitation.

Contrary to a popular impression that nationality is something fixed and capable of exact definition, it has come to be recognized that it is rather a product of historical development, and that all attempts to formulate a series of universally applicable prerequisites break down. Nationality is essentially subjective, an active sentiment of unity, within a fairly extensive group, a sentiment based upon real but diverse factors, political, geographical, physical, and social, any or all of which may be present in this or that case, but no one of which must be present in all cases.[2]

[1] *The Atlantic Monthly*, April, 1915, p. 528.

[2] Cf. especially Eduard Meyer, Zur Theorie und Methodik der Geschichte, pp. 37 ff., who remarks justly that the different factors contributing to the sentiment of nationality must be investigated for each nationality separately. Yet there is no impropriety in isolating, for purposes of observation, and surveying the rôle of one particular factor,—such as language, the obvious relation of which to national sentiment has not of course been overlooked by writers on nationality, but the relative importance of which is variously estimated. This is what is attempted in the following—not exhaustively, for this would mean a review of all linguistic and political history, but by means of illustrations selected from ancient and modern times. We are not concerned with any doctrinaire thesis of the ideal relationship between language and nationality,—nor, again, with the problem whether what seems to many the economic folly of preserving minor languages from extinction is not more than offset by the sometimes extraordinary impulse to educational progress which attends a linguistic-national revival. We are concerned here only with the question of what the relationship between language and national sentiment has been as a matter of historical fact.

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The most casual observer recognizes that nationality and the state are not synonomous, though they often coincide, and "nation" is now used most commonly in a political sense. It is to avoid this political connotation of "nation," or at least its ambiguity, that "nationality" has come to be preferred to "nation" in its broader sense. Political union is the natural consummation of nationality; and conversely, such union may in time create a genuine nationality out of heterogeneous elements, as in Switzerland. But, as we well know, nationality often exists without corresponding political expression. With the partition of Poland, the Poles did not cease to be a nationality. The Austro-Hungarian empire comprises not one nationality or two, but ten. The ancient Greeks in the period of their highest development were a nationality, but not a nation in the political sense, likewise the Germans in the time of Goethe.

The notion of physical kinship, inherent in the word "nation" by derivation, and fitting the romantic idea of the evolution of family to nation, is perhaps the most conspicuous element in the popular conception of nationality, and at the same time the least real factor. We speak of the "German race" or the "Latin races," to the distress of the anthropologist, who feels that the use of the word "race" in any such connection is an absurdity. For there are no pure races, in a physical sense, in Europe, and real racial distinctions of skull, stature, hair, complexion, etc., so far as they are still traceable with any definiteness, cut right across the existing nationalities. They reflect a grouping so remote in the past as to be of wholly subordinate interest for the historical period. In short, the "races of Europe" in the language of the anthropologist have nothing to do with the "race of Europe" in the popular sense, where "race" is merely a convenient equivalent of "people" or "nationality."

But supposing that we ignore the remote racial classifications, and understand kinship in a more limited sense, as common descent within a given historical period. Beyond question the belief in such kinship is generally an important element in national consciousness. Yet we have only to think of the extent of invasion and colonization to which nearly every corner

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of Europe has been subject, to realize that this belief can only be approximately true. And, what is more significant, no matter how nearly true it may be, it is not demonstrable. Recorded descent is at best restricted to a few families. It is the linguistic descent which is really demonstrable, and which is instinctively felt as evidence of national descent.[3]

Sociologists speak of a certain "likemindedness" as the fundamental characteristic of nationality. No doubt, especially in the more fully developed nationalities, there is something which goes deeper than all external criteria, and a true understanding of this something is the highest goal,—but also the most difficult. Its definition is so delicate a matter that there is danger of its proving illusory even in the hands of scholars, and it is scarcely a substantial reality in the common man's consciousness of nationality. That which is tangible and observable, and also the basis of "likemindedness," is community in definite customs and institutions; and of these the most important are religion and language.

A common form of religion was a conspicuous element of national consciousness in the ancient world, where religions were distinctly national. In eastern Europe there is still a close relationship between church and nationality, and the church has

[3] And not improperly, if we understand by this the physical descent of, at the very least, a considerable portion of a nation, and especially its social descent. In the reaction against the careless confusion of language and race, there is now perhaps less danger of overestimating than of underestimating the historical bearing of linguistic evidence. For it is still a truism that language implies a people speaking it. It does not pass from one people to another without human agency. In the majority of cases of racial mixture it is the language of the numerically superior element which survives, so that here linguistic descent reflects also the physical descent of the majority. The mere physical domination of a small body of invaders, forming only the ruling class, is not sufficient to impose their language upon the masses. Witness the fate of the Franks or the Normans in France, the Swedish founders of the Russian state, the Asiatic Bulgars, the Manchus in China. In those cases where a minority has imposed its language upon the majority, as for example the Romans in Gaul, this is all the more evidence of the dominance of this minority in social organization. The linguistic descent then reflects a degree of physical descent by no means inconsiderable, but especially what it is fair to call the main line of social descent.

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been a powerful agency in maintaining language and nationality.[4] But it needs no demonstration that in modern Europe distinctions of religion and nationality are not to be identified. Everywhere the lines intersect. Even among Asiatic peoples, where the religious factor has so largely overshadowed ethnic distinctions, a change is observable in the direction of a keener sense of nationality on the linguistic basis, as for example among the Crimean Tartars, or in the new Turkish nationalism.

If we turn now to language, as the factor which is to engage our especial attention, it is, of course obvious enough that this also is no universal criterion. The inhabitants of Switzerland do not regard themselves as Germans, Frenchmen and Italians (to ignore here the small "Romansch" element), but as Swiss. Centuries of a common history have created a sentiment of common nationality, in spite of the difference in speech. We are not merely a different nation politically, but are sensible of being a distinct nationality from the English, in spite of community of language. And in general the nationalities of the Western Hemisphere have developed upon a geographical and political basis. Again, the Irish nationality is obviously not restricted to the small fraction which still speaks Irish. At the same time the effort of the Gaelic League to revive interest in the Irish tongue is a notable phase of the national revival. It was an Irishman who once said with feeling: "A people without a language of its own is only half a nation. A nation should guard its language more than its territories, 'tis a surer barrier,

[4] The Turkish identification of religion and nationality and the centuries-long grouping of all the Christian subjects in one "millet" enabled the Greeks, who were in complete control of church and education, as well as of commerce, not only to maintain but even to extend their language and nationality. The well-to-do Bulgarians and Wallachians spoke Greek and called themselves Greek, and in many cases this meant a permanent accession to Greek nationality. The movement was halted by the nineteenth century revivals of the other Balkan peoples, notably the Bulgarian, which was directed first and foremost against the Greek domination of the church. Although the Greeks are still inclined to claim what they call the "Bulgarian-speaking Greeks," namely those who adhere to the Greek patriarch instead of the Bulgarian exarch, this is hopelessly untenable. And, indeed, the undisputed claims of Greek nationality on the linguistic basis offer a goal sufficiently advanced for the most ambitious politician.

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a more important frontier than mountain or river." On the other hand, Professor Mahaffy, who has as little sympathy with the language movement as with Home Rule, remarks: "It seems to be a profound mistake that distinct nationality can only be sustained by distinct language."

In a strict sense this is of course true. But the "profound mistake" is rooted in the observation of what is the general rule rather than of what is the exception. It is the other situation, the intimate relation between language and nationality, which in Europe certainly dominates alike the naïve attitude of the common man and the deliberate policy of statesmen. The belief that loss of language means loss of nationality is instinctive and also supported by countless examples in history.

For of all the institutions which mark a common nationality, language is the one of which a people is most conscious and to which it is most fanatically attached. It is the one conspicuous banner of nationality, to be defended against encroachment, as it is the first object of attack on the part of a power aiming to crush out a distinction of nationality among its subject peoples. Furthermore, it is matter of record that several of the nineteenth century revivals had their beginnings in the field of language and literature, beginnings which were safe and unobtrusive, but most effective in awakening national consciousness. Even the dry-as-dust philologist, all innocent of political interest, has in more than one instance definitely contributed to this end. Up to the most recent times questions of language rights have held the first place in national propaganda, and have been the occasion of political upheaval, riot, and revolution. With few exceptions the European nationalities are essentially language groups; and especially for those in eastern Europe, which can not be defined in political or geographical terms, language is the admitted criterion of nationality, the only one available for statistical purposes.

The familiar modern policy of denationalizing a subject people by imposing the language of the dominant nationality, or, expressed less offensively, of unifying heterogeneous elements of the state by encouraging unity of speech, has ample precedent.

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The Assyrian king Sargon boasts of having carried into captivity peoples speaking strange languages and varied dialects, and *made them of one speech.* An example which strikes one as equally remote in the past, though far from it in actual date, is, curiously enough, from the Western World. From a Spanish-Inca writer we learn that the Incas imposed their language upon all the subject tribes of their empire. Teachers were provided in all the towns, and it was understood that no one could attain any considerable office who was not acquainted with the state language.

The political expansion of Rome carried with it, step by step, the spread of its language. When the Greek language had reached its greatest expansion, Latin was still confined to a few square miles. Within a few centuries it had become a world language. No administrative career was open to one ignorant of Latin, nor even, in theory at least, the prize of Roman citizenship. While there is no evidence of the systematic application of a linguistic test, and indeed this was obviously impracticable when citizenship was granted wholesale to towns and provinces, we are told, for example, that the emperor Claudius deprived a Lycian of Roman citizenship because of his annoying inability to understand Latin. Wherever Roman domination was complete and long continued, the intensiveness of its organization inevitably resulted in the general adoption of Latin and the extinction of the native languages. Hence the present "Latin nations" or "Latin races," terms which on their face illustrate the popular recognition of the relation between language and nationality.

Exception must be made of the Greek East, where the maintenance of the Greek language, and thereby of Greek nationality, was never seriously imperilled by Roman rule. A language which educated Romans were accustomed to look up to as a superior vehicle of literature and education, which Cicero, for example, speaks of as read among "almost all peoples" in contrast to Latin confined to "its own rather narrow boundaries," could not be put on the same plane as the uncultivated languages of Western Europe. The use of Latin in Greece was never more

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than a thin official veneer, and even officially Greek was not deprived of all standing. Public regulations were published in parallel Latin and Greek versions. Towns often addressed communications to Rome in Greek. Greeks were at times even allowed to address the Roman senate in Greek. It is all the more interesting to note the disposition of Roman officialdom to insist on the prestige of Latin. The practice of permitting Greek in the Roman senate was frowned upon and on occasion definitely prohibited. Cicero was blamed for having addressed the Syracusan assembly in Greek. High Roman officials in Greece, however well able to speak Greek, made a point of pronouncing their formal addresses in Latin, which was then rendered into Greek by an interpreter. To cite only one of several instances on record, Aemilius Paulus after the battle of Pydna spoke privately to the defeated Perseus in Greek, but at the assembly of Amphipolis he made his formal proclamation to the Macedonians in Latin, which was then repeated in Greek by the praetor.

No other European nationality has so long a recorded history as the Greek, and nowhere is the connection with the development of nationality and with its maintenance more apparent. While the Roman nationality developed at a definite center, as did the language, and was from the outset centralized and above all politically effective, the ancient Greek nationality was a slowly maturing sentiment of community, which did not affect the political union of the Greeks, and only rarely, and then partially, united them against a common foe. On one of these occasions, the beginning of the Persian war, the Athenians assure the Spartan envoys that they will not be faithless, to the Greek people, which is "of the same blood and of the same tongue," nor to their common shrines and like religious customs. The belief that they were of the same blood, however near the truth it might be, could not of course be founded on any record or genuine tradition, but was evolved, and incorporated in legend, out of the general consciousness of community. The tangible, observable factors which created this consciousness were speech and customs, and of these the community in speech was the most definite

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and striking."[5] The identification of Greek language and nationality is transparent in Plato's lament that "all Sicily would soon be almost devoid of the Greek tongue, converted into some Phoenician or Oscan power, a result which all Greeks should earnestly oppose. The persistence of the language has been the vital factor in the maintenance of Greek nationality through all political vicissitudes down to the present day. Roman domination, the latter settlements of Slavs and Albanians on Greek soil, and the centuries of Turkish rule, only emphasized the resisting and absorbing power of the Greek language.

The relation of language to the revival of nationality, or again to its loss, is well illustrated by the history of the Slavic peoples, all but one of which have at some period been in danger of denationalization, and some completely absorbed. Or let us say rather the Balto-Slavic peoples, for the Lithuanians and the Letts, although loosely referred to as Slavs, are not Slavic, but only nearest akin to the Slavs. The Lithuanians and the Lettic languages, with the extinct Old Prussian, form the Baltic subdivision of what philologists call the Balto-Slavic branch of the Indo-European family.

The never ending conflict between Slav and German has been going on since the time of Charles the Great. For Slavic tribes had occupied the old Germanic land as far west as the Elbe and beyond, so that a line drawn from the mouth of the Elbe to the head of the Adriatic would mark roughly the line between Ger-

[5] It is to be noted that the Greek language in contrast to Latin was as slow to attain that degree of uniformity which we expect in a "national language," as was Greek nationality to effect political unity. The particularistic tendency manifested in the system of rival city-states had its counterpart in the linguistic situation. Until a late period there was no Greek language in the sense of a single standard language used throughout Greece, but rather numerous local dialects, each paramount in both spoken and written form within its own domain. These dialects, however, had sufficient resemblance to be in the main mutually intelligible; and furthermore, while no one dialect prevailed exclusively even in literature, the works of the Greek poets, whether in Aeolic, Ionic, Attic or Doric guise, were familiar to all Greece. So, in spite of the long continued diversity in dialect, the Greeks could not fail to realize that they were of one tongue, that all others were "barbarians." And eventually the dialect of Athens became, first the recognized language of prose literature, and, later in a modified form, the common language of the Greek world.

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man and Slav. All the vast region including Berlin, Leipzig, Dresden, etc., was for centuries Slavic, as hundreds of the local names still show. This was reoccupied by German colonists, and the unorganized and uncivilized Slavic tribes, as they were converted to Christianity, were also Germanized. A detached branch northeast of Hanover retained their speech till the beginning of the eighteenth century. Now there remain only the Lusatian Wends or Sorbians, a little Slavic oasis, northeast of Dresden. While loyal Germans in political sentiment, they still retain their Slavic speech (beside German, for they are bilingual), but in diminishing numbers, and it is only a question of time when it will be as dead as Cornish, and with it every trace of distinct nationality have disappeared as completely as was long since the case with the Slavs further west and north.

Like the northern Slavs, so also the Baltic Prussians of the Königsberg region, whose language, preserved in sixteenth century catechisms, is of extraordinary interest to the philologist, were completely Germanized by the seventeenth century. Yet their name lived on to vastly greater fame. For Prussia in its original sense, the present province of East Prussia, whence the first "King of Prussia," crowned at Königsberg, derived his title, has its name, of course, from these Baltic Prussians, next akin to the Lithuanians and Letts. It is this transfer of the name, coupled with the fact that so much of present Prussia was once Slavic territory, that is the excuse for one of the many misleading statements elicited by the present war, namely that the Prussians are really Slavs.

The barrier to the further eastward progress of Germanization was the consolidation of the Poles. Here too Germanization was threatened, especially in the thirteenth century, when immense numbers of German colonists poured in. But by this time the Polish state, which had its beginning in the tenth century, was fairly strong, and a native Polish clergy worked actively for maintenance of the Polish language. The church authorities definitely ordered that the people should be taught the *pater noster* in Polish, and that in the schools there should be only teachers who were acquainted with Polish. Later, after Poland

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became a great power, all danger of Germanization was past. The consciousness of nationality and pride in the national language and literature became so strong that no subsequent political events could efface it.

Since the decease of Poland as a political entity, the language has been the one ineradicable mark of nationality; and this has been recognized alike by the Poles themselves and by the governments that have sought to assimilate them. The attempt of Germany to Germanize its Poles by the help of repressive measures against their language has been a conspicuous failure. Instead of the Poles becoming German speaking, the German colonists in large numbers have become Polish-speaking. The Russian policy toward the Polish language, varying in severity but always repressive, has only made the Poles more obstinately attached to it.

Austria long since gave up trying to denationalize its Poles, and won their support by giving them free hand to resume their ancient dominance over the Ruthenian population of Eastern Galicia. For since 1869 Polish has been the recognized official language of all Galicia. The University of Lemberg remains wholly Polish, while the Ruthenians are clamoring for a Ruthenian University in which their own language, a form of Little Russian, shall be recognized. And in spite of violent Polish opposition this has been seriously considered by Austria, as a means of strengthening the sentiment of a Ruthenian nationality as distinct from Russian, and offsetting Russian propaganda in Galicia. For the official Russian policy toward the "Ukrainian" movement is not to recognize the Ruthenians, or their own Little Russians, as a distinct nationality with a distinct language, but to stamp them plain Russians.[6]

Now that Polish autonomy is being freely promised by both sides in the present conflict, it is well to realize that this is something very different from a restoration of the old Poland at the height of its power. For this was only partly of Polish nationality, the larger portion being Russian or Lithuanian.

[6] See p. 56.

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The world has almost forgotten the existence of a Lithuanian people, and that they ever played a rôle in history. They are now scarcely two millions in number, a small fraction in the extreme northeast of Prussia (the region including Memel, Tilsit and Gumbinnen), where they have been under German Protestant influence since the time of the German Order, the rest in that part of Russia which lies to the east of this and south of Courland, which is Lettic. This, only extended further south, has been their home since they are first heard of in the eleventh century in conflict with the Russians. In the thirteenth and fourteenth centuries a succession of able Lithuanian princes conquered an immense stretch of Russian territory, south far beyond Kiev and east almost to Moskow, and at the same time withstood the might of the German Order. Thus was established what is known in history as the Grand Duchy of Lithuania or simply Lithuania, which once reached from the Baltic to the Black Sea. By the marriage in 1386 of the queen of Poland with the Lithuanian Grand Duke Yagello, who was crowned king of Poland, a dynastic union was effected. For some two centuries Lithuania continued to be governed directly by native princes, who strove to resist its subordination to Polish interests. But with the more effective union of Lublin in 1569 Lithuania virtually disappeared from history. Despite some later abortive separatist efforts, in which the famous Radziwill family was prominent, it remained an integral part of Poland, until by the partition it came into the hands of Russia.

Of this Lithuania of history only a relatively small portion, in the north, was really Lithuanian in speech. The rest was White Russian and Little Russian. The official language employed by the Lithuanian rulers was a form of Russian, and in later times Polish became the language of administration and of education. Lithuanian was never the state language, was not taught in the schools, and received no literary cultivation. It was merely the language of the peasant class in the north, and likewise in Prussian Lithuania, and the little that was written there in Lithuanian before the eighteenth century was exclusively of religious character, Bible translations and tracts for the instruction of the peasantry.

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Nevertheless the language, however obscure its status, did survive, and it is this alone which prevented the total obliteration of Lithuanian nationality. Without it the Lithuanians would have long since forgotten that they were anything but Poles, Russians, or Germans. It was in Prussian Lithuania that the language first attracted the notice of the outside world. Lithuanian folk-poems were collected and translated into German, arousing the lively interest of Schiller and Goethe. But, curious as it may seem, it was the new science of comparative philology, from the early nineteenth century on, which brought most fame to the Lithuanian language. It was seen that this language was remarkable for its preservation of early forms, and it came to be regarded as a sort of Sanskrit of the West. Eminent philologists engaged in the collection and publication of the folk-literature, in making grammars and dictionaries, in editing the "Old Lithuanian" religious texts, in the minute study of local dialects, and in the scientific exposition of the history of the language. It might seem that the purely scientific interest of a small band of scholars could have no influence on the fate of a language or people. But in this case, and it is not the only one, it certainly did, by reason of the reaction on native sentiment. If the Lithuanians are reminded, as they often are by the Poles, that their language can boast no great literature, they retort that it is one of the most highly prized by scholars and is studied in the greatest universities of Europe. Even the uneducated are aware of this interest in their language, although they may be puzzled to know what it is all about.

In Prussia the fosterings of Lithuanian sentiment has never awakened governmental apprehension of political consequences and it has been left undisturbed. In Russia where is the main body of Lithuanians and where in recent times the national revival has been most pronounced, this was viewed with suspicion. Until 1904 the printing of Lithuanian books, except in Russian characters, was forbidden. Meantime large numbers of the Russian Lithuanians had emigrated to America, and found here a free outlet for their national expression and for publication. Besides their many newspapers, Lithuanian books of all

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descriptions have been published here, in fact more Lithuanian was being printed here than in Europe, until the withdrawal of the Russian restriction in 1904.

Whether this action of Russia was due to a more liberal policy or with the intent of playing off the Lithuanian against the Polish movement need not concern us. There is no doubt that the two are antagonistic. The Poles wish to convince the Lithuanians that, owing to their long connection with Polish history and their debt to Polish civilization, they are virtually Poles and should be a part of the Polish movement, that their insistence on distinct nationality is only a futile "Lithuomania." The majority of Lithuanians, on the other hand, feel that they have given much to Poland in the past and received little but contemptuous patronage, and they will not be exploited further. Incorporation in an autonomous Poland is the last thing they desire. What they hope for is autonomy for themselves, or possibly with the Letts, who are nearest akin and occupy the contiguous territory to the north.

The Letts, owing their civilization to the German colonists, who began to settle at the mouth of the Duna as early as the twelfth century, were pretty thoroughly Germanized in the towns, the Lettic language being merely a peasant vernacular. But in the nineteenth century it came to be cultivated in literature and as a medium of education, and with this movement the sense of nationality grew strong. The revival of the language, being at the expense of German, was warmly favored by Russia. After it had done its work and reduced the use of German to a minimum, Russia's attitude cooled. Precisely the same considerations, it may be remarked in passing, account for Russia's alternate encouragement and discouragement of the Esthonian movement in the Dorpat region, and also of the Finnish movement, only that here it was the Swedish influence and the extensive use of Swedish by the Finns that Russia was glad to see checked by the revival of Finnish language and national sentiment.

Bohemia has been the historic center of the Slav-German struggle. It was all but Germanized, yet became the nursery of

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Pan-Slavism. Bohemia and Moravia were in the eleventh century permanently united in the kingdom of Bohemia, at first in only loose dependence on the German empire, but subject to rapidly increasing Germanization. When Bohemia was at the height of its prestige under the emperor Charles IV, with Prague the imperial capital, it was virtually a German state. The Hussite movement in the fifteenth century was not merely a religious protest, but a national upheaval against Germanization, and was accompanied by intensive cultivation of the native language. This was the "golden age of Bohemian literature." But after the Catholic reaction and complete collapse of Bohemian nationality in the battle of the White Mountains in 1620, the language was regarded as an instrument of Hussitism, and all books in Bohemian, regardless of contents, were burned. Jesuit priests with escorts of soldiers searched even the homes of peasants, and one is said to have boasted that he had burned 60,000 Bohemian books. The language sank to the position of a peasant vernacular.

Towards the close of the eighteenth century began a revival of interest in the Bohemian language, which gained strength in the first half of the nineteenth century and inaugurated a general national revival. And it is well recognized that the seed was planted by a philologist, Dobrovsky (1752–1829), who devoted himself to the study of the Bohemian language and literature and to more general Slavic topics, and is known as the "father of Slavic philology." His interest was purely that of a scholar. So far from being a propagandist, he had neither faith in nor sympathy with the hope of restoring the language to literary use, and himself wrote in German. Nevertheless his scientific devotion to the language, the prestige which he won, and the interest in Slavic studies which he awakened, was a most important factor in the practical revival of the language at the hands of others who were enthusiastic propagandists, men like Kollar, whose collection of sonnets entitled "The Daughter of Slava," in glorification of an idealized Slavism, aroused unbounded enthusiasm, and above all Palacký, who was equally eminent as historian and politician. When invited to go as a delegate to the Ger-

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man National Assembly at Frankfurt in 1848, Palacký made his celebrated reply, "I am not a German, but a Bohemian of Slav race."

What had been a purely literary revival was by this time a vigorous and widespread national movement. Henceforth the Bohemians were to be a thorn in the flesh of the Austrian government, and Austrian ministers have risen and fallen on the issue of language laws designed to satisfy the demands of the Bohemians. And if the latter are still far from satisfied with their constitutional status, the restoration of their nationality and language is an accomplished fact. The native language is dominant in education and literature, in the press and the theatre. It is the German element which is now on the defensive. The University of Prague has been since 1882 divided into a German and a Bohemian University, the latter with several times as many students as the former. Where not so many decades ago little Bohemian was heard in the streets of Prague (in the early part of the nineteenth century one of the literary group reported in great excitement to his friends that he had heard two well-dressed men speaking Bohemian), it is now almost dangerous to speak German. The old street-name signs have been replaced by Bohemian, just as in Laibach they have been replaced by Slovenian, these signs always being a conspicuous barometer of the linguistic situation.

The Slovaks of northern Hungary are closely akin to the Bohemians. They are simply the eastern extension of the population of Bohemia and Moravia, from which they have been cut off since their incorporation in Hungary in the eleventh century. Were it not for their long political separation, they would undoubtedly, like the Moravians, form a part of Bohemian nationality in the wider sense, using the same written language. As it is, the Bohemians think that is their true position, and speak of Slovak as a Bohemian dialect. Some of the most prominent propagandists of Bohemian language and nationality, like the poet Kollar, were of Slovak birth. They thought it the only natural and sane procedure for the Slovaks to use as their literary and standard language the existing Bohemian, from which

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the Slovak dialects differed only in greater degree than the various spoken dialects of Bohemia and Moravia, and as the spoken dialects in every country differ more or less from the standard language. Had Bohemian nationality and language then enjoyed their present established position, instead of being in the first stage of revival, this view might have prevailed. And if by any future turn of events the Slovak country should be detached from Hungary and united with Bohemia, it is still possible that the Slovaks might gradually adopt Bohemian and be eventually merged in a wider Bohemian nationality,—that is, another proviso, if the Bohemians should have the rare wisdom not to force the issue. But as a matter of fact the movement, which originated with the Catholic clergy, to establish a distinct literary language on the basis of the Slovak dialects, carried the day. The Slovaks regard themselves as distinct from the Bohemians in nationality and language, and it is their own subjective view which must be, and is, accepted by the world as representing the actual present situation.[7]

[7] This is one illustration of a fact which, while not in conflict with the general thesis of the important relation between language and nationality, we do not wish to be accused of slighting,—namely that the linguistic situation itself is not something absolutely fixed, wholly immune from manipulation or independent of external factors. For example, it is owing to the political history of the Netherlands that Dutch is a distinct language, while the similar Low German of Northern Germany is only a dialect of German,—that is, according to the conventional use of "language" and "dialect." For these terms are incapable of rigid definition by purely linguistic criteria. The German "dialects" of Westphalia and Bavaria differ from each other much more than do the Danish and Swedish "languages," or Servian and Bulgarian. The popular recognition of a language as such applies primarily to a standard or literary language and the evolution of such is the result of a centralizing process, the manner and extent of which is determined by historical factors. Thus the High German of Luther's bible translation, itself based upon what had already become established as the official language of the Saxon and imperial courts, was finally adopted by the Low German speaking population of North Germany, but never in the Netherlands, though, from the purely linguistic point of view, its use there would not have been materially more difficult or artificial. Another literary language, based upon the native Low German speech had grown up here, and, owing to the political independence, had gained the status of a national language, with all its powers of resistance. The dominance of the speech of Paris marched with the political consolidation of France, and just as the South was not permanently united with the North till after the final extinction of the English claims, so it long remained outside of

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The struggle of the Slovaks has been to escape Magyarization. In the nearly nine hundred years that they have been an integral part of Hungary only their language has kept them distinct, and to this they became more consciously attached with the general revival of national sentiment in the nineteenth century and the Magyarizing policy of Hungary.

The Hungarians or Magyars, it will be recalled, are not

the linguistic centralization. An ordinance of 1539 requiring the use of French in all the courts brought a formal protest from the Province against being forced to use a language which must be learned like Latin. Had the South of France remained permanently detached from the North, Provençal would have the same status as a language with French. Had the absorption by Castile of the other kingdoms constituting Spain extended to that of Portugal, its standard language would be the same Spanish, based on the dialect of Castile. There would be Portuguese dialects coördinate with Spanish dialects, but no Portuguese language in the conventional sense. But since, owing to the course of history, Portuguese did gain the status of a national language and has maintained it for centuries, its position is of course established beyond the liability to reversal, and the relation to national sentiment the same as elsewhere. - Such questions as to "language" or "dialect," one nationality or two, have long since been settled in most of Europe, despite sporadic movements like the Provençal or Catalan revivals. But we must recall the historical basis of their settlement, when we face such questions as whether Slovak is a distinct language or only a dialect of Bohemian, whether Ruthenian, or more broadly, Little Russian is a distinct language or only a dialect of Russian, whether the Slavic speech in Macedonia is Bulgarian, or Serbian, or just "Macedonian Slav." For it is folly to imagine that it is only necessary to apply to the philological expert for a categorical answer. The philologist knows that Little Russian is more closely allied to Great Russian (the standard Russian language) than to any other of the Slavic tongues, and at the same time, differs from it much more than the various Great Russian dialects among themselves. But he cannot determine whether, in the course of historical events, its final relation to Russian will be parallel to that of Low German of North Germany to German, or to that of Dutch to German. The philologist knows that the Slavic speech of Macedonia has many points in common with Bulgarian, others in common with Serbian, and he may chart these in intricate "isoglossal" lines. But Serbian and Bulgarian philologists will continue to differ in the interpretation of the same facts; and if the unprejudiced conclusion is that the relation to Bulgarian is the closer, such a scientific dictum is of far less consequence than the prevailing Macedonian sentiment mainly the result of Bulgarian propaganda through their school system in favor of Bulgarian language and nationality. An extended period of either Serbian or Bulgarian control of the schools would secure the dominance of either Serbian or Bulgarian, but the latter with less resistance.

For illustration of an exceptionally conscious design in the creation of a standard language, note what is said about Croatian, p. 63.

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Slavic or even Indo-European, but a people of Asiatic origin, whose language belongs to a well defined family of which Finnish is the other most important representative. This is one of the cases where language has been more persistent than race, for in physical type the Hungarians are no longer distinctively Asiatic. Hungary in the fifteenth century was one of the strongest European states, the chief bulwark against the Turkish invasions. But the defeat by the Turks in the fatal battle of Mohacs in 1526, and the later dependence upon Austria, brought Hungarian nationality to such a low ebb that at the end of the eighteenth century it seemed marked for extinction. It was a linguistic crisis which provoked a reaction and inaugurated a national revival, marked by a rapid change in language sentiment from indifference to positive fanaticism.

The order of the emperor Joseph II (1780–90) that German should be the official language throughout the empire raised a storm in every quarter, but especially in Hungary, where it expressly forbade the use of Hungarian or Latin in official matters. Now, as a matter of fact, the Hungarian nobles at this time had no great regard for the Hungarian language, which they looked upon as a peasant vernacular. They were accustomed to speak German, also French, and especially Latin, which had always been the official language of the law-courts and of legislative debate. But the definite order to substitute German for Latin as the official language was something they would not and did not accept, and thus aroused on the language question they took the first measures to resuscitate their own language, the appointment of teachers of Hungarian in the gymnasia. After the interruption of the Napoleonic wars, the movement proceeded vigorously. In 1830 the Hungarian National Academy was founded. Hungarian literature flourished, and down to the time of the revolution of 1848 and again since the Compromise of 1867, a long series of increasingly stringent language laws has enforced the use of the Magyar tongue. Eventually the only relic of official German in Hungary was in the army,—its "Words of Command." And even this so enraged the Hungarians that it was the dominant issue in the crisis of 1903–06, which nearly led to a complete breach with Austria.

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But not satisfied with narrowly escaping Germanization, the Hungarians in their triumphant nationalism proceeded to attempt the Magyarization of their "subject races." The educational system and every power of the government was devoted to the propagation of the Magyar tongue. The desire of the Slovaks and other Slavic peoples, and of the Roumanians in Transylvania, for educational facilities in their own languages was systematically thwarted, and agitation for equal language rights branded as treasonable. Place names were Magyarized by law, the old Saxon Klausenburg appearing as Kolozsvar, etc. The change of personal names to a Magyar form, if partly voluntary, has also been *suggested* to government employees in official circulars. Yet the net result of the Hungarian policy has been to intensify the sense of distinct nationality, and to undermine the loyalty to the state.

The Croatians are on a different footing from the Slavs of Hungary proper. The "Illyrian movement" in the first half of the nineteenth century, of which the chief apostle was the writer Gaj, established a Croatian literary language and aroused a national sentiment able to resist the Magyarization which was then threatened and which drove Croatia into the arms of Austria in the Hungarian Revolution. And under the Compromise of 1868, although the union with Hungary, which had existed since the twelfth century, was restored, the Croatians retained substantial autonomy and full recognition of their language. It is the official language of the diet at Agram, and the delegates to Budapesth, who function only when "joint affairs" are under discussion, may also speak in Croatian, a right which they have on occasion employed as an unexcelled instrument of obstruction. The slightest infringement of the Croatian language rights provokes an outcry loud enough to reach even our American press, as in the case of the Railway Bill of 1907, which legalized Hungarian as the language of the whole state railway system including that of Croatia.

In Dalmatia too, which has belonged successively to Croatia (and so to Hungary), Venice and Austria, Croatian is now supreme in the educational system, here at the expense of the

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diminishing Italian element. The Croatian language is then in an established position, with a flourishing literature and science, the center of which is Agram, and the sense of nationality is correspondingly strong. This leads to the larger question of Serbo-Croatian nationality, a political aspect of which furnished the immediate occasion of the present war.

The Croatians and Serbs are peoples of the closest linguistic kinship, but of the most fundamentally divergent historical development. The fact that the Croatians are adherents of the Roman, the Serbs of the Greek church, is indicative of their past history. The Croatians faced the Occident, the Serbs the Orient. Serbia, after becoming the most powerful Balkan state of the fourteenth century, was prostrated by over four centuries of Turkish rule, its nationality submerged and all but lost. But the language survived and furnished the basis of a national revival. Toward the end of the eighteenth century a widely travelled and broadly educated Serbian, Obrodović, ordered published a series of works in a language intelligible to the people (earlier Serbian writings had been an artificial mixture of Serbian and Russian Church Slavonic), which did more than anything else to awaken Serbian aspirations toward intellectual progress. In the early nineteenth century Vuk Karadzić's collection of Serbian folk-songs awakened European interest in the Serbians, and his philological studies and reforms of orthography laid the foundation of the modern Serbian literary language. Meantime the popular uprisings had led to the autonomy of Serbia.

In view of the profoundly different past history of Serbs and Croatians, the conception of a Serbo-Croatian unity obviously could not be of popular origin. It had its birth in philological and literary circles; and its first and most important realization was the attainment of more complete linguistic unity. This perhaps requires some explanation. Serbo-Croatian speech consists of a series of related dialects stretching from the Bulgarian confines to the Adriatic, a territory comprising Serbia (as constituted before the Balkan Wars, but only a small part of its subsequent extension south), Montenegro, Bosnia, Herzegovina, Dalmatia, and Croatia, the difference being greatest

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between the extremes of Eastern Serbia and Croatia in the northwest. But the leaders of the "Illyrian movement," the founders of Croatian literature, Gaj and his fellows, deliberately rejected the local Croatian of the Agram region as of too narrow scope, and adopted an intermediate type, such as Vuk Karadzić had also chosen for Serbian and which with some modification was finally accepted as the Serbian literary language. So it was brought about that the Serbian and Croatian "languages," that is the literary and standard languages as taught in the schools, are virtually the same, only under different names and written in different alphabets, Servian in the Cyrillic,[8] Croatian in the Latin.

The achievement of a common literary language has been the means of promoting intellectual unity, and the Serbo-Croatian idea, fostered by the leaders of literature and science in Agram and Belgrade, spread to wider circles and to the field of politics. The cultural and also political union of all Serbo-Croatians became a definite program. On the other hand, the difference of religion, mutual jealousy, and the existence of rival Pan-Serbian and Pan-Croatian radical movements, are serious obstacles to a genuine popular union. The Serbians are apt to speak of the greater Serb people or a Greater Serbia, including all the Croatians. The Croatians resent such a designation of themselves and their language. They are Croatians, and their language may be the same as Serbian, yet it is not "Serbian" but "Croatian." So much is in a name, when national sentiment is involved. The Austrians escape the dilemma in Bosnia by applying the

[8] One of Vuk's orthographic reforms was the adoption of one letter from the Latin alphabet. This met with violent opposition, as a fatal and unpatriotic concession to Rome. For even such an external feature of language as the form of the letters employed may become an element of religious and national sentiment. Bismarck is said to have refused to read German books printed in Roman type. In Roumania it was not the greater simplicity of the Latin alphabet that enabled it to oust the Cyrillic (one cannot imagine such a change in Russia), but the "Latin race" sentiment. We have noted the former Russian regulation that Lithuanian books could be printed only in Russian characters. When the Turks made some concessions to the Albanians regarding the written use of their language, they still insisted that Turkish characters should be employed. And while this factor is now eliminated, the two rival systems of writing Albanian in the Latin alphabet are under popular suspicion of being agencies of Austrian or Italian propaganda respectively.

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term "Bosniak" to the common languages of the Croatian, Serbian, and Moslem elements. The effect of the present war upon the whole Serbo-Croatian question is one of its most interesting problems. If a union of all the Serbo-Croatian speaking peoples is ever realized, that is a genuine union satisfactory to both Croatians and Serbians, it will be a remarkable victory of an originally intellectual movement, operating upon linguistic kinship, over exceptional obstacles.

The "South-Slav" question is primarily that of Serbo-Croatian unity, but the term is also used in a wider sense to include the Slovenians, whose language is more closely related to Serbo-Croatian than to any other Slavic tongue, and whose territory borders on Croatia. The main seat of Slovenian nationality is Carniola, with Laibach its political and intellectual center. Centuries of Germanization had reduced Slovenian territory to a small fraction of its former extent, and even there German had become the language of the larger towns, and the sense of distinct nationality was almost extinguished. But here too in the nineteenth century the language was revived and has gained full recognition in local administration and education. The Slovenian movement is aggressive, and of peculiar political interest from the fact that, while the city of Trieste is mainly Italian-speaking, its Hinterland is Slovenian. When it is a question of resisting Italy, Austro-Hungary can count on the loyalty of Slovenian, Croatian, and Dalmatian.

The Bulgarians, while not included in the prevailing political use of the term "South Slav," are also southern Slavs. That is, their language is one of the southern Slavic languages, and they are regularly and properly reckoned as one of the Slavic nationalities. It is true that the Bulgars, who gave them their name, were a tribe of Asiatic invaders, who conquered and unified a group of Slavic tribes settled south of the Danube, and established the old Bulgarian state, which in the tenth century was the most powerful in the Balkans. For a time the rulers kept their Asiatic speech, also using Greek for official purposes, but were eventually absorbed in the Slavic masses. The Bulgarians are therefore no more an Asiatic people than the French are Germanic because the Franks gave them their name and founded

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their state, or than the Russians are a Scandinavian people because the Scandinavian adventurers called Ros gave them their name and founded their state. Certain physical characteristics of the Asiatic are, however, still evident, especially in eastern Bulgaria. And the Asiatic connection is not forgotten at times when their relations with other Slavs are strained, as with Russians or Serbians, who are then inclined to dub them "Semi-Slavs" or "Mongols."

The Bulgarians were the first of the Balkan peoples to fall under Turkish rule, and the last to emerge, if we except the Albanians, among whom Turkish rule was hardly more than nominal. The Bulgarian nationality was the one most completely submerged, the most nearly lost forever. It was not so much from the Turks that their denationalization was threatened as from the Greeks, who held complete control of church and education. The well-to-do Bulgarians spoke Greek and called themselves Greek. The peasants spoke their various dialects, but had lost all national consciousness, and the very name Bulgarian was forgotten. The revival began with a resuscitation of the language: the first modern Bulgarian book was printed in 1806, the first Bulgarian school was founded in 1835 and in two years the number had become fifty. The long struggle for church independence, vigorously opposed by the Greeks, culminated in the establishment of the Bulgarian exarchate in 1870. The people which had remained docile and unmoved at the time when the Serbians and the Greeks were fighting for independence was now at last awakening, though even in the Russio-Turkish war it was only an interested spectator. It is the development of Bulgaria since 1878 that has astounded the world. But this was made possible by the preceding period in which national consciousness was revived through the language.

The two Balkan peoples that are neither Slavic nor Greek, the Roumanians and the Albanians, obviously owe their distinction of nationality to their language. The Roumanian language is a derivative of Latin. Hence the Roumanians, no matter what people they were before being Romanized or in what region this process took place (for it is by no means certain that they represent the unbroken continuation of Roman col-

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onies in Dacia), are a "Latin race" in the same sense as the French or Spanish. This is a definite factor in their national consciousness and affects their sympathies. But this consciousness of Latin nationality is a matter of comparatively recent history. From the time of their earliest mention the Roumanians appear in connection with Slavs, and their church language was the Church Slavonic till near the middle of the seventeenth century. There was no written Roumanian before the middle of the sixteenth, and this was written in the Slavic (Cyrillic) alphabet down to most recent times, the official adoption of the Latin alphabet in Roumania dating from 1873.

It was the Catholic clergy of Transylvania that first taught the Roumanians that they were a "Latin race" and aroused a sense of distinct nationality. This national sentiment spread to the larger body in the present Roumania, which was under Turkish rule and, in the eighteenth century and beginning of the nineteenth, under dominant Greek influence, and here it developed most effectively. Since the independence of Roumania it has in turn supported the Transylvanian Roumanians in their resistance to Magyarization, and hopes for their ultimate political union with Roumania.

The Vlachs of Macedonia, whose vernacular is closely akin to Roumanian, have never developed any sense of Roumanian nationality. The Roumanian propaganda which started about 1886 had small effect. The great majority of the Vlachs speak Greek, as well as their own dialect, and are Greek in sentiment. In fact some of the most ardent supporters of Greek nationality are of Vlach descent, as Mr. Averof, the donor of the stadium at Athens and the warship of that name.

The Albanians represent a portion of the old Illyrians which in this mountainous region just missed the complete Romanization and subsequent absorption by Slavs that took place farther north. We say just missed complete Romanization because, as it is, the largest single constituent of the Albanian vocabulary is of Latin origin; and in spite of the very extensive Turkish, Greek, and Slavic elements, due to later borrowing, it would be reckoned as one of the Romance languages, were it not for the presence of a perfectly distinct pre-Roman substratum.

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If we except the partial and shortlived union under their national hero Skanderbeg in the fifteenth century, the Albanians never formed a distinct state. The language only has kept alive their sense of being a distinct nationality, and in the revolution of 1911–12 the recognition of Albanian as the official language in Albania and the right to organize education in their own language was one of their formal demands. In the last few years the educated leaders have been busy with the problem of a standard language and its most appropriate written form, to replace the variety of dialect and transcription which had been in vogue. This may seem ludicrously futile in face of the present chaotic conditions. But it is by education, and in their own languge, that it will be possible, if at all, to overcome such obstacles to effective union as the ignorance and backwardness of the bulk of the population, their primitive tribal organization with the unwritten law of blood-feuds, and the religious division of Moslem and Christian, and of the latter into Catholic and Orthodox, And if it seems that the experiment of an independent Albania is a hopeless failure, it must be remembered that the continuance of foreign intrigue has never left it a fair chance.

If the relation between language and nationality has been illustrated chiefly from the minor peoples of Eastern Europe, it is because here the evolution or revival of national sentiment has been of so recent date as to make this relation particularly conspicuous. For the more firmly established nationalities the situation is so familiar that it is almost superfluous to refer to it. It is only the exceptional case, like that of Switzerland or Belgium, that excites remark. Furthermore, language may seem to lose relative importance in the presence of other factors such as a strong national state. But its vital relation to nationality is no less real. Does any one doubt, for example, that the German language is not only the most conspicuous outward token but the very essence of German nationality? "Preserve our German language" has been the motto of the Pan-German League, as "Preserve our Italian language" has been the appeal of the Italian Irredentists.

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THE JUSTICIABILITY OF INTERNATIONAL DISPUTES[1]

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The appalling record of the past year and a half ought to make us, interested in international law, extremely modest. Professing that we expound international law as it is, we have been deluding ourselves and really setting forth international law as we believed that it ought to be. The universal bankruptcy of normal international relationships has shown to us how great a gap there is between that which we had conceived to be and that which really exists. Many of the foundations of international law we now see to have rested upon a conception of international society which did not really obtain. Perhaps, too, although professing contact with the actual, we have been living in an unreal world, a world wherein the ideal was given a much wider range and play than we were justified in believing. Any attempt to reconstruct the formal bases of international law—and such reconstruction must be made—must take account not only of the experiences of the present war, but of the long series of half-submerged elements which led to the present disaster almost with the inexorability of the forces of natural law. Shocked and benumbed as we are by the constant revelations of horror in these past months, there is also the awful realization that, after all, what has taken place has been largely the result of factors seemingly without immediate human direction.

Any plan for a permanent peace, and for the amicable settlement, after this war is over, of disputes between states, must take into consideration these facts and look at international society not as we have looked at it, as a static condition of man-

[1] A paper read at the twelfth annual meeting of the American Political Science Association.

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kind, but as one in which there are dynamic factors too vast and intricate for any decisive plan adequately to include and reckon with all the circumstances. These dynamic factors have to do not only with the relations of states with each other, a subject to which international law in the past has confined itself, but with the larger relations of groups to groups both within and without states, of individuals to individuals, of world movements of population, of earth-hunger and its appeasement, and of the strivings of international commercial competition. These things must be reduced to the régime of law, to an acceptance of a universal *status quo;* and in the past this has never come about except under a universal imperial dominion, or world-state.

Slowly and painfully must the edifice be reconstructed, from foundation to superstructure. The basis of a régime of law among states must be those really juristic principles, recognized by the members of the world-society as not repugnant to the realization of national ideals on the one hand, and on the other as fitting in with the generally accepted ideals of justice and of fair dealing on the part of peoples within a state.

Such a limitation may seem highly reactionary, and to run counter to the accepted theories of international law; but, if you will permit it, international law has been in the past something of an esoteric science. The formal elaboration of its principles has been made too often by those who have not only an idealistic conception of world-relationship, but by those who have from their position had too little contact or even sympathy with the actual conditions of popular life. After all, international law has been written and to a large extent been put into effect by those having the aristocratic point of view. The determination of the foreign policies of a state has never been—perhaps cannot as yet be—fixed by popular methods.

What parts of international law can properly be claimed to fall within the limits just set forth? Can we include what have been called for centuries the primordial or absolute rights of states? An international law built upon these principles connects at once with the absolutist theory of the state, makes

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world-society simply the sum of the relationships between primordial units, and has little to do with what lies back of and within such units. It makes such units equal with each other in legal rights and legal duties. It stresses absolute independence, together with a theory of sovereignty associated with the organic theory of the state. At certain periods in the development of the world such a group of conceptions makes for progress. At other periods it makes for reaction, just as the doctrine of natural rights was revolutionary in 1776 and 1789, and has become reactionary under a newer theory of social justice.

The doctrine of natural rights within the state cannot be eliminated. It must be restated. A natural right today we conceive to be one which society guarantees to the individual, not merely that he be protected in a fixed sphere of action, but because by such guarantee to the individual the rights of the whole are best preserved and protected. In like manner the traditionally primordial rights of states must in time be re-stated, not in terms of the state, but in terms of humanity and of a world-society. The state, according to such a theory, is to be protected in its international legal rights and duties not in order to guarantee its existence as an end in itself. It is protected in order that the good of the whole of humanity and civilization may be advanced.

If this statement be correct, then we must recreate and reconstruct the doctrines of independence and equality if not in the light of pragmatism at least in terms of social dynamics. The theoretical position of sovereignty within the state must be attacked anew, even if it include a reconsideration of the conception of the state as modified by the various factors which give it existence. We are met at the outset with the objection that such a doctrine does not square with the facts of actual world-life. Perhaps not as yet; but it is incontestably true that the formal bases of Grotian International Law do not accord with the actualities of twentieth century world-life.

International law has been traditionally defined as the body of rules which states habitually observe in their mutual dealings. This definition raises the question: Why are certain rules habitu-

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ally recognized? Why habitually? Because, in the first place, such rules are assumed to fit the ideals of international conduct ingrained in the habits of civilized mankind generally; and secondly, that such common ideals do not run counter to the policies of states in their ordinary mutual relationships. The observance of international law, after all, we must confess, depends largely upon national policies. In so far as national policies coincide with certain generally accepted justiciable principles, we have a stable foundation for international law. Where policies intervene we have a situation in which dynamic factors have not yet been resolved, and to that extent the law does not actually exist. To illustrate: the doctrine of the equality of states is not effective under any principles of policy such as that built up under the doctrine of balance of power. In strict law one state has the right to sell territory to another and to put, after such cession, the other power into possession. Yet there are few quarters of the globe where such a legal right can be exercised. The legal right, let us say, of Denmark to sell its West Indian possessions. and to put the vendee into possession is unquestioned. That the policy of the United States would interdict such a transfer is equally apparent. As to the universal validity, therefore, of this elementary legal right, the United States is not in accord. And here we get at the essential difference between justiciable and non-justiciable controversies in international law.

The term justiciable has been made use of in English for many centuries and it usually carries with it the idea of a court proper to settle controversies. The jurisdictional idea is paramount. Now the creation of a court and the setting up of its jurisdiction is, to that extent, a recognition of a juristic status quo. Such a conception was conspicuously absent from the federal court of appeals under the articles of confederation. The notion that legal coercion is inseparably connected with the life and vigor of a court means acceptance, voluntary or forced, by the peoples over whom the jurisdiction is given, of a juristic status quo. The setting up of a court and the giving to it of jurisdiction mean the possession, by the parties under the jurisdiction of

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the court, of common legal conceptions and principles, at least for the purpose of maintaining the jurisdictional efficacy of such a court.

International relationships must rest, as was recently said by our distinguished secretary of state, upon a common regard for law and humanity. Without such an acquiescence on the part of the governments of states in the principles of law and humanity, no international court can be effective. There must, however, be not merely a passive acquiescence in such principles by the peoples of the various countries whom the governments merely represent, but an aggressive belief in such principles which if need be may be translated into action. The provision in international arbitration treaties, that questions vitally affecting the honor of the independence of states are not subject to arbitration, although frequently criticised in the past, is seen after all to rest upon a profound psychological basis. Upon such questions there is not yet a common factor of legal ideas sufficiently in harmony with common national policy, to the extent that any real justiciability is possible.

An illustration of this may be seen in two incidents described by Mr. Thayer in his recent life of John Hay. The first is the attitude of Mr. Roosevelt toward Germany's alleged aggressions against Venezuela following upon the so-called pacific blockade of 1902. Germany was forced by the United States, it is said, to arbitrate the question of her claims against Venezuela. Certainly it would seem that these claims were properly justiciable in a court of arbitration, and a precedent for forcing such settlement was found in President Cleveland's policy towards Great Britain in 1895. On the other hand, President Roosevelt, assuming that the claim of the United States with reference to the Alaska boundary was eminently proper and just, is said to have served notice upon Great Britain that in certain contingencies the United States would refuse to arbitrate the boundary question and would proceed to draw a line for itself.

Both questions were properly justiciable and yet in both cases the underlying reasons why arbitration was had were kept concealed from the public. That the United States was eminently

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successful in both as a matter of policy is proved by the result; but that the peoples of the countries concerned were educated to a more rational method for the settlement of international differences may well be doubted. The refusal of Germany to arbitrate, and the refusal of Great Britain to accede to our method of arbitration, might conceivably have resulted in a check to the attainment of the policies of the United States, and in a great retardation in the acceptance of the principles of international arbitration. If so, we should have had a breach between this country and the nations mentioned which would have been justified on the grounds of American policy. Popular approval would then have been sought not so much for the purpose of justifying international arbitration as a principle, but to maintain what was assumed to be the paramount rights of the United States in the western hemisphere. This is said not with the idea that the policy of maintaining such a position by the United States is inherently wrong, but to suggest that what made the disputes really justiciable was not in any sense based upon a popular demand for arbitration, but because the policy of the United States happened to harmonize with the narrower legal considerations.

The earlier case, when President Cleveland demanded that Great Britain arbitrate the Venezuela boundary, still more clearly illustrates the difference between a popular demand for a legal settlement of an international dispute and the popular approval of American policies. That Mr. Cleveland's aggressive attitude with reference to Great Britain and its refusal to arbitrate the Venezuela boundary controversy was popularly acclaimed in this country, there can be no doubt; but popular enthusiasm was aroused for the support of a national policy irrespective of the demand for arbitration which the policy attempted. We cannot truthfully say that popular opinion in this country can be aroused with reference to any particular method of settling international disputes. It can, however, under skillful direction, be aroused for the support of policies which the government of the Unites States assumes with reference to any foreign power. This we may deplore, but we must recognize that such

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is the fact. These illustrations, it is believed, show how far, even in a democratic republic like our own, we are from an acquiescence, governmental or popular, in a general international legal status quo.

It has been suggested that the United States supreme court, with its jurisdiction over controversies among States, offers a pattern for a possible world court wherein all matters of international differences may be decided. Assuming that such a world court could have the coercive power of a league to enforce peace, guaranteed by the countries of the world, it would still lack the important basis which the United States supreme court has in its jurisdiction over state controversies. When a State is admitted into the Union, it is admitted upon a plane not only of legal, but also of a certain political, equality with other States. No such thing is possible as the aggression of one State upon another with reference to territory, or commerce, or the movements of population. In other words, the admission of a State into the Union proceeds upon the recognition of the great constitutional status quo.

Any plan for a world court, backed by a league to enforce peace, must proceed upon the theory of an accepted status quo not only with reference to the legal relations of states with each other, but with reference to the conditions within states, governmental and political. The map of the world must be fixed as the map of the United States within its boundaries is fixed. Things as they are, or as they will be when such a plan is put into effect, must be taken as the basis for all time to come. *De facto* states will be *de jure* states; *de facto* governments, *de jure* governments—to reverse the principles of the Holy Alliance, which is the attempt in history most nearly akin to the one suggested.

If there be controversies among the States of the union which are not justiciable, it is hard to conceive of them since the civil war. The position of the State in the Union is fixed; and at all points, at least so far as its relations with other States are concerned, which might lead to aggression, it is susceptible of some kind of legal coercion. If we conceive of the question of seces-

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sion as in the nature of a controversy between States, such a controversy was not justiciable. Not being justiciable, the present status quo was reached by war.

The range of justiciability with reference to controversies between the states of the world is limited, then, by the common factor of juristic principles common to all civilized peoples and accepted by the governments of such peoples as in harmony with their state policies. That this range can be of but slow growth must be admitted. At present it would seem that the so-called international mind no longer exists. If the present war is productive of any good, it must be in the creation of a new international mind, based not upon an unanimity of expression by the governments of states, but by the common convictions of a militant humanity.

The comparatively small number of the subjects of international law hinders rather than advances the range of international justiciability. A norm of law is most easily ascertained when it affects a great mass of legal subjects. When the parties to international relationships number but half a hundred, the usual rarely occurs, the unusual dominates. Within a state the greatest validity is given to a rule of action when that rule is applicable to and adopted by a great mass of legal subjects. Only out of such a scheme does a true norm of law proceed; and in the long run the sanction of a rule of municipal law is most potent when the rule attaches to the greatest number of legal subjects.

It is in connection with this idea that the relative inefficacy of law-making treaties is to be ascribed. What Savigny a century ago so pertinently described as the proper basis of the codification of municipal law—a long period of development of common legal interests and ideas—founded upon a conscious national solidarity—should be considered with reference to international law. The so-called great international law-making treaties are at the present time but monuments of more or less benevolent aspirations. Like laws adopted by a state in unmindfulness of actual conditions or of the legal prepossessions of a people, many international statutes have broken down because

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they did not express the common fund of ideas with respect to international life. Take, for instance, the Hague convention with reference to the inviolability of neutral territory. That convention was ratified by the Senate of the United States and is now the supreme law of the land. Yet who can seriously maintain that the world or even the United States is educated up to the militant acceptance of such a general principle?

Again, geographical factors reduce the range of justiciability of international disputes. The influence of these factors upon international law is incomparatively greater than ordinarily one is led to believe. We must face the fact that the old idea of eternal principles of international law, valid *quod semper, quod ubique, quod ab omnibus,* is modified by the specific situations of the various countries of the world. To admit that such factors wholly prevail over the rules is to deny that international law exists; but that geographical factors do modify these rules is never more evident than it is during war. The peculiar situation of the West India Islands with reference to the United States, of Portuguese Southeast Africa to the Boer republics, of the Scandinavian countries and Holland to Germany—these actually modify what otherwise might be considered as universal principles; and the extent to which this modification takes place practically limits the range of justiciable methods in the settlement of international disputes.

Finally, there must be recognized what may be called the sphere of an international law of crime. It is possible that in combating Austin's doctrine that international law is not true law, we are in danger of neglecting what he claimed for it, a positive international morality. Such an attitude is more likely as long as international law is based upon a political philosophy which sets forth the state as a person essentially non-moral. Acts which shock the most obvious claims of humanity come to be looked at not as international crimes but as international torts to be adjusted through diplomatic apology and assuaged by money payment. Anything whether in the form of certain kinds of pacificistic propaganda or in the smugly polished phrases of diplomatic utterance, which glosses over the essen-

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tially anti-social and therefore criminal nature of certain international acts may contribute to a fatal confusion of ideas. This among a people already far too regardless of the value of human life may dull its sensibilities, weaken its moral fibre, and destroy its desire and ability to defend those things which are of greatest value to civilization and society.

If what has been said is regarded as a confession of failure, I shall feel that it has been said to no purpose. My idea is rather that we must, as interested in a noble science, take account of things as they actually are and realize that the international law of the future cannot be founded upon the one and single principle of state personality; but that it will rest, upon the slow and painful accumulations of experience; not that it should depend upon diplomatic opportunism alone, but upon the wider principles of human kinship and of humanity; that international law after all, to be a valid law among states, cannot be merely the idealistic portrayal of the philosophic jurist or of the policy of expediency adopted by the bureaucrat. It may be that the state is but a passing phenomenon. It must be that the theory of the state as a juristic person must be re-examined in terms of humanity. Until this is done the prospects of the future in the way of the settlement by legal methods of all or even the more important international disputes cannot be predicted with anything like confidence.

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QUASI-LEGISLATIVE POWERS OF STATE BOARDS OF HEALTH[1]

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The aim of the present paper is to describe the regulative powers granted to state boards of health, and to consider the wisdom of these grants as well as their validity as tested by the principle that the law-making powers granted to legislatures may not constitutionally be delegated by them to other agents of government.

State boards of health, while primarily administrative bodies, have generally a more or less extensive power to make regulations in supplement to and having the force of statute law. Questions thus arise as to the extent and validity of the ordinance-making powers granted. Does the power to make these regulations, having the force of law, change the nature of these boards? Under what conditions may they exercise their power?

THE NATURE OF THE POWER

In State vs. Burdge, a Wisconsin case, the court held that "The state board of health had no legislative power, properly so called, and none could be delegated to it. It is purely an administrative body. . . . . It cannot be doubted but that under appropriate general provisions of law in relation to the prevention and suppression of dangerous and contagious disease, authority may be conferred by the legislature upon the state board of health or local boards to make reasonable rules and regulations for carrying into effect such general provisions which will be valid, and may be enforced accordingly. The making of such rules is an administrative function, and not a legislative power,

[1] In substance a chapter of a thesis on "State Administration of Health."

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but there must first be some substantive provision of the law to be administered and carried into effect. The true test and distinction whether it is administrative, and merely relates to the execution of the statute law lies between the delegation of the power to make the law, which necessarily involves a discretion as to what it shall be, and conferring authority or discretion as to its execution, to be exercised in pursuance to the law. The first cannot be done. The latter can."[2] The supreme court of Indiana denied that the legislature can relieve itself of its responsibility in legislation. "It cannot confer on any body or person the power to determine what the law shall be, as that power is one which only the legislature, under our constitution, is authorized to exercise; but this constitutional inhibition cannot properly be extended so as to prevent the grant of legislative authority, to some administrative board or other tribunal, to adopt rules, by-laws, or ordinances for the government of, or to carry out a particular purpose. It can not be said that every grant of power to executive or administrative boards or officials, involving the exercise of discretion and judgment, must be considered a delegation of legislative authority. Laws must be complete but methods and details may be delegated to some designated body or officer. In order to secure and promote the public health, the State creates boards of health as an instrumentality or agency for that purpose, and invests them with the power to adopt ordinances, by-laws, rules, and regulations necessary to secure the objects of their organization. While it is true that the character or nature of such boards is administrative only, still the powers conferred upon them by the legislature, in view of the great public interests confided to them, have always received from the courts, a liberal construction, and the right of the legislature to confer upon them the power to make reasonable rules, by-laws, and regulations, is generally recognized by authorities."[3] The extreme view is expressed by the Vermont court. "Police powers may be lawfully delegated to municipal corporations, and

[2] State vs. Burdge, 95 Wis. 390.

[3] Blue vs. Beach, 155 Ind. In accord with this case, Isenhour vs. State, 157 Ind. 517.

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to local or state boards of health, and, when so delegated the agency employed is clothed with power to act as fully and efficiently as the legislature itself."[4] It seems perfectly clear then that the boards of health are purely administrative bodies, and yet may under certain circumstances exercise the power to make regulations having the force of law.

THE EXTENT TO WHICH THE POWER HAS BEEN GRANTED

The power to make regulations having the force of law has been granted in various degrees; in some cases covering everything applying to health; in others, certain specified particulars; in some cases in very general terms, and in some, in terms intended to be so exclusive and inclusive as to be free from interference from the courts. A few quotations from the statutes of various States will illustrate. The law of Indiana says the state board of health shall have power "to pass rules governing the duties of all health boards and all health officers, governing the collection of vital statistics, governing the hygienic disposal and transportation of the dead, governing the specific features of quarantine and for the enforcement of the state health and registration laws."[5] The board has issued very elaborate and concrete regulations under authority of this section.

In Illinois "The board shall have authority to make such rules and regulations and such sanitary investigations as they may from time to time deem necessary for the preservation and improvement of the public health, and they are empowered to regulate the transportation of the remains of deceased persons."[6] The attorney general has interpreted the above to mean that the state board has the power and is duty bound "to make any and all rules and regulations which they deem necessary to preserve the public health," and that the whole power of the State would be used to enforce them.[7]

[4] Starte vs. Morse, 80 Atl. Ren. 189.
[5] Acts, 1909, ch. 144, sec. 6.
[6] Rev. Statutes 1907, ch. 126, sec. 2.
[7] *Public Health Laws and Sanitary Memoranda.* Issued by the State Board of Health, 1907, p. 6.

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Pennsylvania makes it the "duty of the advisory board to advise the commissioner on such matters as he may bring before it, and to draw up reasonable orders and regulations as are deemed necessary for the prevention of disease and for the protection of the lives and health of the people of the State, and for the proper performance of the work of the department of health."[8] Various specific grants of power to make regulations are mentioned in the laws pertaining to the different departments of work.

Wisconsin provides that the board "may make, alter, modify or revoke rules and regulations for guarding against the introduction of any such diseases into the State [previously specified in the law] for the quarantine and disinfection of persons, localities and things infected or suspected of being infected by such disease, for the transportation of dead bodies, for the speedy and private interment of the bodies of persons who have died from contagious disease, for the proper observance of provisions" of the law relating to specified public buildings and premises, etc. "The board may declare any or all of its rules and regulations made in accordance with the provisions of this section to be in force within the whole or any specified part of the State and make them applicable to any vessel, railway car or public vehicle of any kind."[9]

Some States give the board very limited power to make regulations. In New York the board has power to make rules governing the collection of vital statistics, transportation of dead bodies, determining which diseases are communicable, and "may" make rules for the protection of water supplies; in Massachusetts, "the sanitation of police station houses, lockups, and houses of detention and the use of the public drinking cup and roller towels" and governing public water supplies; in Alabama, "the sanitation of railroad depots and passenger cars;" in Arkansas, "only the transaction of business," while the Connecticut laws give no regulation making power.[10]

[8] Sec. 5, Act Apr. 27, 1905, Public Laws, 313.
[9] Sec 1408, Wis. Statutes, 1898.
[10] *Statutes and Public Health Bulletin*, no. 54, p. 43.

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In twenty-four States the board of health is given power to add to the list of diseases to be reported which are specified in the law.[11] Specific power is granted to enact rules to prevent the introduction and spread of communicable diseases in thirty-five States.[12] Some States, as Oregon and Utah, grant a similar power for the "preservation of public health," or as Illinois and Iowa, the "preservation and improvement" of the public health, or as in Pennsylvania the protection of "health and life." In several of the above States power is given to make special regulations in cases of emergency. Power to make rules governing the transportation of dead bodies is specified in the laws of twenty-three States.[13] Seventeen States give power to make rules governing quarantine.[14]

The power to make regulations governing water supplies varies greatly in the different States. The Massachusetts board may make rules and regulations to prevent the pollution and to secure the sanitary protection of all such waters as are used as sources of water supply.[15] The Minnesota laws give the board authority to make rules to prevent "pollution of streams and other waters and the distribution of waters by private persons for drinking or domestic use."[16] The Montana board may make regulations to prevent pollution and secure sanitary protection of

[11] Arizona, Colorado, California, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New York, Ohio, Pennsylvania, South Carolina, Virginia, Washington and Wisconsin.

[12] Arizona, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

[13] Alabama, Arizona, Arkansas, California, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Minnesota, Montana, New Jersey, New York, North Carolina, North Dakota, Ohio, South Carolina, Vermont, Washington and Wisconsin.

[14] Florida, Georgia, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Montana, New Hampshire, North Carolina, Ohio, Oregon, South Carolina, Texas, Utah, Virginia, Wyoming.

[15] Sec. 113, ch. 75, Rev. Laws. The Connecticut and Merrimac rivers excepted.

[16] Sec. 21, 31 Rev. Laws, 1905.

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water for public use.[17] The New York state health commissioner may make rules and regulations for the protection of all water supplies except those waters and sources affecting the supply of New York City. For these the commissioners of water supply, gas and electricity of New York City make rules with the approval of the state commissioner.[18] The board of North Carolina has power to make "such reasonable rules and regulations as in its judgment may be necessary to prevent contamination and to secure other purifications as may be required to safeguard public health."[19]

Vermont gives its board power to make regulations to prevent pollution of waters for domestic use.[20] In other States where the boards have power to grant or refuse permits for waterworks and sewerage plants, and to investigate such concerns and to issue orders affecting them, they, in fact, enjoy a wide power of making regulations. Pennsylvania and Ohio are examples. The boards of several States have power to issue regulations governing water supply, drainage and sewerage of cities, towns and villages. This is true in Florida,[21] Virginia,[22] West Virginia,[23] and Wyoming.[24]

In Louisiana, Minnesota and Iowa practically the whole health administration rests on regulations made by the board. The same was true in Texas and California but the codes also drafted by the boards were subsequently enacted into laws. Power to make regulations for the government of the board and to carry out its functions, is granted in nineteen States.[25]

Idaho, Kentucky, Maine, Michigan, Montana, Oregon and Tennessee provide that the regulations are "subject to the pro-

[17] Rev. Laws, 1911, sec. 1560.
[18] Cons. Code, 1909, sec. 71, as amended by ch. 695, Laws 1911.
[19] Sec. 24, *Health Code, 1912 Bulletin*, March, 1912, p. 14
[20] Sec. 5497, Rev. Statutes.
[21] Laws, 1909, ch. 593, no. 12, sec. 1.
[22] Laws, 1910, ch. 179, sec. 1.
[23] Rev. Statutes, 1910, sec. 4382.
[24] Laws, 1906, ch. 150, sec. 4382.
[25] Arizona, Arkansas, California, Colorado, Georgia, Indiana, Kansas, Nebraska, New Mexico, North Dakota, Massachusetts, Mississippi, Missouri, South Dakota, Virginia, Wisconsin, Wyoming, and West Virginia.

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vision of the health acts," and Georgia, Minnesota, Missouri, Nebraska, New Mexico, Utah, Virginia and West Virginia, that they must not be contrary to existing laws. In Rhode Island the regulations must be approved by the governor; in Maine, by the governor and council; and in Minnesota, by the attorney general.[26]

ATTITUDE OF THE COURTS TOWARDS THE EXERCISE OF THIS POWER

1. Making Regulations Determining which Disease must be Reported

The law of Iowa conferred upon the state board of health the power to draw up a health code and provided that any one who knowingly fails, neglects, or refuses to comply with and obey any order, rule or regulation of the state board of health is guilty of a misdemeanor. The board placed scarlet fever on the list of reportable diseases. The law was attacked on the ground that it did not define the crime for which it provided punishment. The court said: "We think it clear that the legislature may provide for the punishment of acts in resistance to, or violation of, the authority conferred upon such subordinate tribunal or board. When these boards duly adopt rules or by-laws by virtue of legislative authority, such rules and by-laws, within the respective jurisdiction have the force and effect of a law of the legislature; and like an ordinance or by-law of a municipal corporation they may be said to be in force by the authority of the State." A certified copy of a publication of the regulations containing the rule in question is sufficient evidence to show the existence of the rule and knowledge of it.[27]

2. Making Regulations to Prevent the Introduction and Spread of Contagious Diseases

Under the law giving it power "to make such rules and regulations, and to take such measures as may in its judgment be

[26] *Statutes and Public Health Bulletin*, no. 54.
[27] Pierce vs. Doolittle, 130 La. 333.

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necessary for the protection of the people of the State from Asiatic cholera, or other dangerous and contagious diseases," and other general powers, the state board of health of Wisconsin passed a resolution requiring all children to be vaccinated as a prerequisite to attend school, and ordered the regulation to be enforced at Beloit.[28] There was no epidemic at Beloit and but a single case of small-pox which was properly quarantined. The court held the regulation invalid. "There is no statute which requires vaccination as one of the conditions of the right or privilege of attending the public schools; and in the absence of any such statute, we think it cannot be maintained that the rule relied on is a valid exercise of the power of the state board of health. The state board is the creation of the statute. It has only such powers as the statute covers. It has no common law powers. . . . . The powers of the state board of health, though quite general in terms, must be held to be limited to the enforcement of some statute relating to some particular condition or emergency in respect to the public health; and although they are to be fairly liberally construed, yet the statute does not, either expressly or by fair implication authorize the board to enact a rule or regulation which would have the force of a law changing the statute in relation to the admission and right of pupils of a proper school age to attend the public schools." The court grants that reasonable regulations having the force of a law could be made to carry into effect the general provisions of a statute, but such a regulation as this could be made only by authority of a statute. Furthermore, the regulation was held unreasonable for there was no epidemic calling for such drastic rule. All regulations must bear the test of reasonableness.[29]

The Indiana board under a similar general power enacted a regulation providing that when an epidemic of small-pox was impending a local board of health could make a rule requiring vaccination as a prerequisite of school attendance. In passing on the validity of this regulation, the court said: "It is true that

[28] The regulation was general in terms, but apparently the board expected it to be enforced only when local authorities were ordered to put it into effect.

[29] State vs. Burdge, 95 Wis. 390.

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such rules and by-laws must be reasonable and boards of health cannot enlarge or vary, by the operation of such rules, the powers conferred upon them by the legislature, or any rules or by-law which is in conflict with the State's organic law, or antagonistic to the fundamental principles of justice, or inconsistent with the powers conferred upon such boards would be invalid. . . . . There is no express statute in this State making vaccination compulsory, nor imposing it as a condition upon the privilege of children attending schools, and in the absence of such a law, the exclusion must be justified by an emergency."[30] The Illinois supreme court held on the same conditions that "the powers of the board are limited to the proper enforcement of statutes, or provisions thereof, having reference to emergencies requiring action on the part of the agencies of the government to preserve the public health and to prevent the spread of contagious disease."[31] The state legislature may make vaccination a condition of attending school,[32] or if the statute expressly confers the power to make such regulation it is valid though no epidemic is impending.[33] The same power is upheld when exercised under a municipal ordinance when an epidemic is impending.[34] A local board may make a regulation requiring every one to be vaccinated when acting under authority of a statute.[35]

Under the power to adopt regulations to prevent the spread of contagious and infectious diseases, the state board of Kentucky provided that all dairy cattle must submit to a tuberculin test to

[30] Blue vs. Beach, 155 Ind. 121.

[31] Potts vs. Breen, 167 Ill. 67. Reaffirmed in Lawbough vs. Board of Education, 177 Ill. 572.

[32] Abell vs. Clark, 84 Cal. 226. In re Walters 33 N. Y. Supplement, 322.

[33] Bissel vs. Davidson, 65 Conn. 183.

[34] Duffield vs. Williamsport School District 162 Pa. State 476.

[35] Jacobson vs. Mass., 197 U. S. 11.

Though it was not necessary to the decision of the case, the Supreme Court of Wisconsin held in State vs. Burdge, 95 Wis. 390 (cited above) that the board of health could not make a regulation requiring vaccination as a condition of school attendance even though acting under a statute giving it authority to do so unless an epidemic existed. This decision is contrary to the general opinion. The subject is fully discussed and citations given in American State Reports, Vol. 80, p. 230, in connection with Blue vs. Beach, 155 Ind. 121, and in 29 L. R. A. 251 in connection with Bissel vs. Davidson, 65 Conn. 183.

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be made by the veterinary surgeon of the board or his assistants, and where cattle responded, the owner must destroy them or the veterinary would do so at the owner's expense. In passing upon the validity of the regulation the court saw in it simply a completion of legislative enactment. "Regulations that are not unreasonable and oppressive, and that are calculated to bring the disease under effective control and stop its spreading, are not statutes. They are not something in addition to, but are details within the statute passed by the state legislature. They must be germane to the statute, and in their execution have reference solely to the object aimed at by the statute." Certain limitations upon the action of health boards exist. (1) "The existence of the disease in the community must be a fact, and not a mere suspicion. (2) The regulation adopted for testing its presence in the particular animal or herd, must be such as is accepted by science as one reasonably calculated to discover it. (3) If isolation or destruction is adopted as a remedy, it must have been accepted by the medical profession that the treatment is one well calculated to eradicate the disease and stop its spreading. If the boards proceed otherwise, they do so at their peril."[35]

3. Rules Governing the Transportation of Dead Bodies

Under the general power to make rules "to prevent outbreaks and spread of contagious diseases" the Indiana state board provided that "Every dead body must be accompanied by a person in charge, who must be provided with a ticket marked, and also present a full first class ticket marked 'corpse' and a transmit permit from a board of health or proper health authority giving permission for the removal, and showing name of deceased, age, place of death, cause of death (and if a contagious or infectious disease), the point to which shipped, a medical attendant, and name of the undertaker." In this case the transmit permit did not contain the name of the medical attendant, so the railroad company refused to accept the body. The court sustained the

[35] Kentucky Board of Health Report, 1908–1909, p. 72

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railroad company and the regulation of the state board of health. The regulation was reasonable in character and such as to protect the public health.[37] Since this time the board of health of Indiana has been granted specific power to regulate the transportation of dead bodies. This case seems to indicate that a state board may make such specific regulations where it is given general power to make rules to protect public health against contagious diseases.

4. Quarantine Regulations

Under authority of a law giving it power to make general rules for the detention and inspection of all travelers and their property when known to have been exposed to certain contagious diseases or to have come from a locality where such diseases exist, the Michigan state board made a ruling that "all baggage of all immigrants, and all containers of such baggage, destined to pass through Michigan must be detained until disinfection" unless it has a certificate from an inspector of the Michigan board of health. In reviewing the case the court said: "The rule in question did not make it a prerequisite of inspection that the baggage come from a locality where such disease existed, as ascertained either by the board or inspector, and in this respect was broader than the statute, and can not be sustained."[38] In other words, had the board limited its ruling to those goods coming from places known to be infected, the courts would have sustained it.

A similar case arose in Mississippi when the board by a ruling prohibited any person from getting off trains or boats at any point within the State because some cases of yellow fever existed along the coast and cases were suspected to exist at various other places in the State. The court held the regulation void because unreasonable. There was no epidemic calling for so drastic a rule.[39] A Louisiana case illustrates the possible extent of quar-

[37] The Lake Erie and Western R. R. Co. vs. James, 10 Ind. 550.

[38] Hurst vs. Warner, 102 Mich. 490.

[39] Wilson vs. R. R. Co., 77 Miss. 714. Same holding in Koscuisko vs. Solomon Slowberg, 68 Miss. 469.

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antine regulations. The state board of health had provided for inspection of ships before landing. At the time of an epidemic in New Orleans the board passed a resolution preventing any ship from landing in New Orleans or other places within practically one hundred miles thereabouts. A ship with a clean bill of health protested. The court refused to interfere, and held that "It is the right and duty of the different States to protect and preserve the public health" even though it interferes incidentally with interstate commerce.[40] The emergency called for drastic action.

5. Regulations Affecting Water Supplies

In this field the regulations are most often limited in their application to a particular stream, pond, or city. From the nature of the problem they could not be practical and be state wide. The law under which the board acts is general in terms and expresses the policy of the State. The regulation of the boards of health apply the general principles laid down by the law.

The state board of Massachusetts made regulations protecting the waters used by the metropolitan water and sewerage board. It was contended that they were in "conflict with the plaintiff's right of property." But the court held that "as a riparian proprietor without other rights, the rules and regulations are binding upon him, and if he has a prescriptive right to pollute water they are still binding and must be enforced."[41] A regulation of the Vermont board prevented bathing in a certain pond which had been used as the source of water supplies for over twenty years. The riparian owners claimed it was a violation of personal liberty. The court held the delegation of power proper, and added that the measure must in a reasonable degree tend to accomplish the result sought but refused to consider the wisdom or expediency of the regulation. "Every reasonable presumption

[40] Compagnie Francaise De Navigation vs. State Board of Health, 25 So. Rep. 591.

[41] Sprague vs. Dorr, 185 Mass. 10.

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and intendment is indulged with reference to each element essential to their constitutionality."[42]

The metropolitan water and sewerage board of Massachusetts acting under the legislative grant of exclusive right to regulate ponds and reservoirs used as a source of water supply and to keep persons from going on such waters, passed a rule making it necessary to secure a license to boat on a pond used for water supply. In contesting, the defendant attempted to show that the regulation was unnecessary. The court refused to consider that question and held that the power to regulate included the power to permit people to go on to the water subject to reasonable regulations. "The legislature determined, as it has a right to determine, whether it should exercise the power to exclude the public from the waters."[43] But if a state board is given the power to regulate the use of waters to prevent pollution, it can not make the securing of a license from some other board a requisite for going on to the ponds to cut ice. A board cannot delegate its powers.

The situation is the same when a regulation affects a municipality. The state board of Vermont ordered the village of St. Johnsbury to cease using a certain water supply for domestic purposes, but allowed the village to use the water for other purposes. The court held that the State had retained the full right of "governing and regulating the internal police of the State" and this embraces "such reasonable rules and regulations established directly by legislative enactment as will protect the public health and safety, and the State may invest local and state boards, created for administrative purposes, with authority in some proper way to safeguard the public health and safety, the method of accomplishing the results being within the discretion of the State, provided the powers of the general government are not infringed nor any constitutional provisions of the State or of the United States." The court refused to inquire into the wisdom of the legislative plan of carrying out its ends.

[42] State vs. Morse, 80 Atl. Rep. 189.
[43] Sprague vs. Minon, 195 Mass. 581.
[44] Commonwealth vs. Staples, 191 Mass. 384.

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It matters not though the regulations cause inconvenience, provided the means have a just relation to the protection of health.[45] A state board may legally be given the power to prevent the dumping of sewage into a stream, or to demand the sewage be purified "in a manner satisfactory" to itself before it can be discharged into a stream.[46]

The right of notice and hearing was demanded by one affected by regulations of the Massachusetts board to protect waters. The court, however, regarded the general rules and regulations to be quasi-legislative, and publication as required by the law as sufficient notice.[47]

6. Status of an Entire Code Issued by a Board

The general assembly of Louisiana created a board of health giving it general supervision over quarantine, and the control of contagious and infectious diseases in the State. The board was authorized to issue a "Sanitary Code for the State of Louisiana" which should contain rules and regulations for the improvement of the sanitary and hygienic conditions of the State. The law indicated general fields, and limitations provided that after adoption the code should be printed and distributed to health authorities and the public generally. A violation of the code was made a misdemeanor and the punishment fixed in the law.[48] The law was challenged on the ground that the legislature could not delegate to the state board of health the power to define what shall constitute a crime, nor delegate legislative power for State purposes, in general, to any subordinate body. The court held that the constitutional provision empowering the legislature to establish a board of health and define its powers made the law valid. "Prescribing its powers" can only mean to delegate to the board of health such powers as may be

[45] State Board of Health vs. Village of St. Johnsburg, 73 Atl. Rep. 58.

[46] Miles City vs. State Board of Health, 39 Mont. 405. State Board of Health vs. City of Greenville, 98 N. E. Rep. 1019.

[47] Nelson vs. State Board of Health, 186 Mass. 330.

[48] Act 192 of 1898; amended by Act 44 of 1900, Act 150 of 1902 and Act 184 of 1904.

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deemed necessary for efficiently carrying out the purposes for which a board of health is created, and power most obviously necessary in such a case is that to make health regulations that shall have the force of law." The regulations need not be promulgated as statutes by publication in the official journal. Mere publication is sufficient.[49]

TENDENCIES

The facts do not justify positive conclusions. Practice varies greatly as the following statements indicate. In a number of States where boards have been organized and reorganized within the last decade, the law has gone into considerable detail, leaving few important matters to be governed by board regulations. Minor details are quite generally left to the control of the boards. In Texas and California previous codes of the boards have recently been enacted into law. In Minnesota the opposite has taken place and the laws were repealed with a view to giving to the board the power to make regulations covering health work.[50] In a number of cases, the state officers are supplementing the laws with extensive regulations. Among these are Indiana and Iowa.

ADVANTAGES AND DISADVANTAGES

It would seem impossible, or if possible, impracticable to specify in detail in the law the work and operation of health authorities. In many departments of government there is a tendency to delegate quasi-legislative power to expert administrative boards. No legislature is able to understand the minute details of the work of every department, or to make general regulations which will apply to every specific case, or to anticipate emergencies which are inevitable. And so it would seem sound to suggest that legislation could well be general, outlining the field in a broad way, leaving the details to experts. There seems little danger in this with the courts holding the check. If it were possible to include all the details in the statutes, it would

[49] State vs. Snyder, 59 So. Rep. 44, La. Superior Court, 1912.
[50] *Public Health Bulletin*, no. 54, p. 44.

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be unwise to do so. It is a very much more difficult matter to amend the law when conditions change than for the health officers to amend the code. New discoveries, and new scientific methods often make such changes necessary to efficient sanitary work. At the same time it is a well known fact that the average legislature is far from being abreast of the times in such matters, and is quite generally willing to postpone action. From every point of view it seems advisable to confer considerable power to make regulations to the boards.

CONCLUSIONS

On the basis of the action of the courts certain principles may be formulated which must be observed by the boards in the exercise of their quasi-legislative function.

1. Regulations must not be contrary to the laws or constitution.

2. Boards can issue regulations only when power is specifically granted by law or is necessarily implied from powers granted. Courts have been liberal in this regard, allowing regulations for transportation of dead bodies, and those requiring tuberculin test for cattle, under the general power to make regulations to protect from contagious diseases.

3. Courts are more liberal in interpreting powers exercised during emergencies than under ordinary circumstances.

4. Regulations in all cases must be reasonable. The question of reasonableness is a judicial one.

5. Regulations must bear a relation to the end in view. However moderate a regulation may be, if it does not bear a direct relation to health, it is invalid.

6. Personal and property rights must give way to general good, and may be affected by regulations if made under authorization of law.

7. A board cannot prescribe a punishment in a regulation. Penalties can be fixed by law only.

8. Publication of regulations is sufficient notice to those affected. If a method of publication is prescribed by law it must be followed. The formalities of publication of statutes is not necessarily required in case of health regulations.

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LEGISLATIVE NOTES AND REVIEWS

JOHN A. LAPP

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Economy and Efficiency Commissions. Thirteen economy and efficiency commissions submitted recommendations to the 1915 legislatures in as many States. Three of these were auditing committees and had little to suggest requiring legislative action.[1] In three States —Illinois, Iowa and Pennsylvania—general surveys were made and valuable reports upon the organization and operation of state government filed; but legislation upon the recommendations made is still in the future. Minnesota created a legislative commission to check up the work of the former which was chosen by the governor. The Minnesota legislature did, however, provide funds so that the governor can collect budget estimates. Upon the recommendations of the New Jersey commissions the legislature of that State passed five consolidation measures, reorganized one department and directed that monthly conferences be held between the various engineering bureaus of the State. The Nebraska legislature adopted practically all of the rules proposed for the conduct of its own business and directed the governor to assemble budget estimates.

Four of the thirteen commissions had been established on a permanent basis. One of these, the New York department of efficiency and economy was promptly abolished by the legislature. The Wisconsin board of public affairs was reorganized and allowed to continue through 1917. The accounting division of this board prepared a very complete book of budget estimates and provided the clerical force for the joint finance committee during the session. The Ohio budget commissioner has apparently been adopted as part of the legislative machinery. He has been represented at the hearings of the finance committee and the finance bills have been regularly drafted in his office. The Massachusetts commission on economy and efficiency has devoted itself to special investigations for the governor and the general court.

In six States new economy and efficiency commissions were created and directed to make general surveys of the state government. These

[1] Louisiana, Mississippi and South Dakota.

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States are, Alabama, Colorado, Connecticut, Kansas, Minnesota and Missouri. The Connecticut commission on the consolidation of state commissions and the reorganization of the public health laws, reported back to the same session and secured the passage of an act establishing a state department of labor and factory inspection. The others report to the next session.

Eight States provided machinery for collecting budget estimates. In five of these the estimates are to be assembled by existing officials. In Minnesota and Nebraska by the governor, in Nevada by the state board of examiners, in Washington by the state board of finance, and in West Virginia by the chief inspector of public offices. The North Dakota budget board and the Vermont committee on budget are organized on the same plan as the Wisconsin board of public affairs, the chairman of the finance committees, one or two other legislators and three or four of the chief financial officers of the State. The Connecticut state board of finance consists of three members appointed by the governor, with the treasurer, comptroller and tax commissioner, ex officio. This board not only collects the estimates, it is directed to sit with and become a part of the joint finance committee during the session. The appointed members serve for six years with overlapping terms. This experiment of Connecticut appears to fit in with the scheme of government in an American State with less disturbance than most of the schemes that have been suggested for collecting and formulating a state budget.

C. C. WATERS.

Providence, R. I.

Recent Tendencies in Charter-Making. During the last half-year the number of cities which have exchanged their worn charters for new has been relatively small. Does this municipal tranquillity mean that less emphasis will henceforth be laid upon the type of charter and more upon the need for an enlightened electorate which will not forget the responsibility of office-holders to it? Or is it merely that we are within sight of the decline of an abnormal enthusiasm for charter revision? The latter might be the expected consequence from the rush towards commission government, were it not that few cities which have tried that form have changed back to the mayor and council type, although attempts in several municipalities have been made without success. Two cities in Massachusetts, however, have abandoned commission government, but in both cases the plan had been

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adopted to meet some peculiar need. In Salem commission government, with its recall proviso, was originally selected in the hope of taking municipal affairs out of the hands of an undesirable but tenacious administration. The scheme having served its purpose, Plan B of the Massachusetts optional charter law was adopted in November. In the case of Chelsea the commission form of government was arranged for, after the city's devastating fire in 1907, through the appointment by the governor of the State of five commissioners for a period of six years. At the expiration of that time the city resumed its normal government.

Two cities which have recently tried, and failed, to give up commission government are Biddeford, Me., and Jacksonville, Ill. In both it was proposed to return to the aldermanic form of administration and in both the movement was defeated by substantial majorities.

Commission government pure and simple has gained a few converts during the last half-year and, in combination with the city-manager plan, has thriven well. About as many cities have rejected the commission form, however, as have adopted it, and such action has not been confined to any particular section of the country. The plan has been lately accepted in Bridgeport, Conn., Cape May, N. J., St. Marys, Kans., Alpena, Mich., and Springfield, Mo.; it was defeated in Bangor, Me., Frankfort, Ky., Lenoir City, Tenn., Chippewa, Wis., Knoxville, Ia., and Billings, Mont. On the other hand, the following cities have adopted the city-manager plan of government: Watertown, N. Y. (Plan C of the optional charter law), Portsmouth, Va., Elizabeth, N. C., Albion, Mich., Webster City, Ia., San Antonio, Tex., and Santa Barbara and San José, Cal.

Although the number of new charters, other than the above-mentioned, has been small, yet there are a good many points of interest to be found—in the adopted charters, in the proposed charters, and in the rejections. In several large cities charter commissions have been at work for some time, with results varying in their stages of completion. The draft of a charter for Newark, N. J., has been finished and awaits approval by the legislature. It provides for six elective officers only, with four year terms, that is, a mayor and council of five, of which the president is selected as such. Voting is by preferential ballot. The salary of the mayor is $10,000, of the councilmen $3500 each, with $4000 for the president. Wide executive powers are given to the mayor—he appoints and removes the directors of departments and is responsible for the conduct of their departments.

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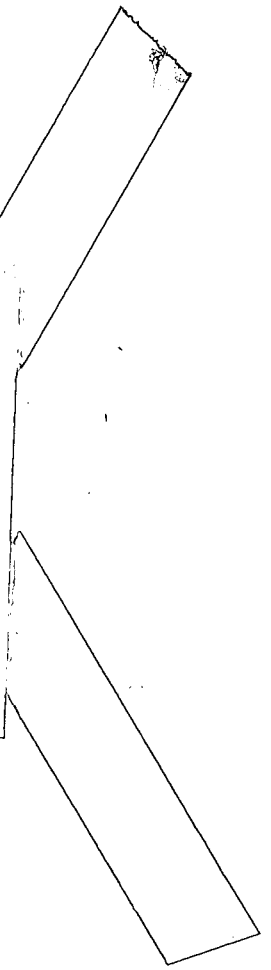
He is a member of the sinking fund commission and in the board of estimate he is entitled to three votes. This latter board, composed of the mayor, the director of finance and president of the council (with two votes each), and the other four councilors (with one vote each), prepares the budget and determines upon the amount to be raised by taxation. To the council belong all other legislative functions, including those formerly looked after by the various municipal boards, and the duties of an excise board. A city purchasing agent is also provided. In a word, the council's legislation (subject to veto by the mayor and repassing by that body) is to be carried out by the mayor's appointees, whom he may remove at any time.

In the city of Los Angeles a new charter, drafted by a board of freeholders, will be submitted to the voters in June, 1916. Here, where the city had overwhelmingly outgrown the provisions made twenty-five years ago, the chief emphasis has been laid upon unity and efficiency. To this end the functions of government, which have been diffused into forty individual branches, are to be administered by twelve departments, with uniform provisions applying to each. The number of commissions has been reduced by ten. The "business" departments of the city are in charge, each, of a single director who is appointed by the mayor and confirmed by the council. Each of the "humanitarian" departments, on the other hand, is placed under a commission of five citizens who receive no compensation. Elective officials include the mayor, a council of nine, the city controller, the city attorney, the city prosecutor, the judges of the municipal courts, and a board of education composed of seven members, all with four-year terms and subject to recall. In addition, there are three boards: an advisory board composed of the mayor, directors of all departments, and presidents of all commissions; a committee of estimates made up of the mayor, controller, and president of the council, which prepares the budget subject to the approval of the mayor and council; and an excise board of five which is composed entirely of the mayor's appointees. The mayor also appoints, under civil service rules, an efficiency chief and the city clerk. Provision is made here, also, for a central purchasing agency. Salaries have been moderately increased in the charter-draft, that of the mayor to $7500, controller and attorney $5000 each, prosecutor $4000, and council members $3000 each. Special attention has been paid to removing all obstacles to the consolidation of city with county offices. With the charter will be submitted four alternative propositions for sepa-



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rate voting. These provide for: (1) the creation of a business manager of departments; (2) a two-year term for elective officers, instead of four; (3) district representation in the council; and (4) election of the council under arrangements for proportional representation.

In this latter connection it might be mentioned that at its recent election the city of Ashtabula, Ohio, used the Hare system of proportional representation for the election of its city council. This is said to be the first application of the scheme in American municipal elections. In Ashtabula seven councilmen were chosen by use of first, second, third and other choice votes, involving the elimination of low candidates on successive counts. By this means it is claimed that representation is given to any faction in the city which can muster one-seventh of the voting strength. The election resulted in the choice of five Republicans, one Democrat, and one Socialist, who represented, racially, one Italian, one Swede, and five natural-born Americans, and, in nature of religion, two Catholics and five Protestants. The choice of a city manager is in the hands of the council.

Another California city which proposed to amend its charter was Oakland, where for four years the council-commission plan, with five commissioners, had administered the city departments. In response to a feeling of dissatisfaction with the lack of central control and single responsibility, fifteen amendments were drafted by the Tax Association of Alameda County intended to simplify the form of government, to promote business efficiency by providing expert administrative service under the control of a city manager immediately responsible to the council, and to insure through its budget provisions complete publicity for all financial transactions. It is endeavored to make a sharp distinction between the legislative and the administrative: the former is elective, unsalaried, subject to recall, and determines *policies* only; the latter is appointed, on grounds of expertness and fitness, and conducts the *business* of the city. The amendments provide for an unsalaried council of six members and a mayor, to perform legislative functions, the mayor to act simply as ceremonial head and presiding officer of the city. Executive powers are in the hands of a city manager, appointed and directed by the city council. His qualifications seem to be desired along the line of a successful administrator and director, rather than an engineer. Next to the city-manager scheme, the most important amendment concerns budget-making. The city manager prepares the budget and the council adopts it. In order to insure full publicity of all financial matters,

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the budget must be printed in pamphlet form for distribution to taxpayers before it is discussed by the council. The school committee is appointed by the mayor instead of elected, as formerly, and its business affairs may be placed in charge of the city manager if so desired. Civil service rules are more rigid and are made to apply to all positions save the city manager and his secretary, and the city attorney and his assistants.

It is interesting to note that two new municipalities in States which have provided optional charter laws, White Plains, N. Y., and Leominster, Mass., have adopted charters which do not correspond exactly to any of the types recommended by the State for adoption. In White Plains a mayor and a board of six councilors are elected at large; the mayor to receive a salary of $1000 and the councilmen $300 each. These elective officers serve as a board of directors for the city and appoint three commissioners—of public works, finance, and public safety—who hold office at the will of the council and select their own subordinates. The Leominster city charter provides for the election, for two years, of a mayor and council of nine, elected, one from each of the five wards, and four at large. Appointment of all heads of departments and members of boards, with the exception of the school committee, the city clerk, and the city solicitor, is in the hands of the mayor, subject to confirmation by the council. The mayor may also remove such persons, with the approval of a majority of the council. The school committee is composed of the mayor and six elected members; the city clerk is appointed by the council, and the city solicitor by the mayor without confirmation. The administrative departments of the city are fourteen in number. Party designations at elections and party primaries are abolished. Provision is made for the initiative and referendum; the percentage of required signatures for petitions being the same as that stipulated in the optional law. No mention is made of a veto power for the mayor, although he may attend council meetings and express his opinions. This charter differs from Plan B of the optional charter law mainly in the smaller charter and in the lack of veto power allowed the mayor.

Two cities in Massachusetts, Cambridge and Salem (as beforementioned) voted in November to substitute Plan B for their existing charters. Plan B, briefly, is known as the "divided authority" type and provides for a mayor and city council of not more than fifteen members, one elected from each ward and the remainder at large.

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To the mayor is given power of appointment, removal, and veto, subject to the approval of the city council. The plan was defeated for adoption at the November election in Taunton.

Another city which is working upon charter revision is Hartford, Conn. The project here presents the novel feature of committee administration for the departments of fire, police, streets, health and charities, parks and water—the committees in each case to be composed of two members of the board of aldermen and one person appointed by the mayor. Other administrative officers are appointed, for a period of three years, by the mayor also, with the advice and consent of the aldermen. The latter boards consists of twelve members, who, with the mayor, are elected for three-year terms. Nomination for office is by petition and party designations are abolished. Any appointive official may be removed for cause by the mayor with the advice and consent of the any four aldermen. A purchasing agent is also provided.

The Chamber of Commerce of Norfolk, Va., has taken action toward charter revision, and its charter commission has reported the result of a year's investigation for a simplified businesslike form of government. It is the opinion of this body that commission government represents a distinct advance over the old type of city government, and yet is lacking in administrative unity and harmony because of the division in executive power and in expertness in the heads of departments. The city-manager plan is consequently recommended as possessing all the good points of the commission form and removing its defects by carrying out the principle of "election for policy and appointment for efficiency." Furthermore, the chamber's commission doubts the usefulness of civil service as applied to the concentration of power and responsibility in the hands of a city manager, and does not favor its extension beyond the fire and police departments. In Richmond, Va., also a new charter is being drawn up and the draft will be presented for some action before long. In this connection it is worth noticing that the part played by chambers of commerce in instigating and procuring charter revisions is steadily increasing. This has been particularly true in the case of city-manager-plan charters, and, in point of fact, most if not all of the earliest adoptions of this scheme were directly proposed by chambers of commerce.

While the city-manager plan is still in the experimental state, it

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is steadily gaining new adherents from those who are content to trust to a principle excellent in theory even though as yet too briefly tried for sure determination of results. Nevertheless a few statistics relating to its adoption may be of interest. Thus far about forty cities have adoped the scheme either through a special charter or by means of an optional state law, while a few over twenty others have made special provisions by ordinance for a city manager. About ten of these cities, however, have not yet put the plan into actual operation. Optional state laws which contain this type of charter have been passed in four States—Ohio, Virginia, Iowa, and Massachusetts. Of these sixty-odd city-manager cities only two, Dayton, Ohio, and San Antonio, Tex., have more than 100,000 population, and three others, Springfield, Ohio, Wheeling, W. Va., and San Diego, Cal., have more than 40,000; while in nearly forty the population is less than 10,000. Twenty-three states are represented in the list, from all sections of the country; the four States which have the largest showing are Michigan with eight cities, Texas seven, California six, and Ohio five. Only one New England State appears in the list—Massachusetts, where the town of Norwood has a business manager by a special provision; New York State has three cities and Pennsylvania one; there are no other strictly eastern states. The plan has found a good deal of favor in the south. In general the concrete advantages which the régime of a city manager brings to a municipality seem to be along the line of better administration of city finances. This is shown in their systems of accounting and purchasing, and in their budgets. It is a feature of most city-manager charters to intrust to the city manager the formulation of the budget estimates. In Dayton an up-to-date form of segregated budget has been adopted, and the city of Jackson, Mich., also shows improvement in this respect. The management of public works departments is another bright spot in city-manager administration, due largely to the fact that in most cities the city manager is an engineer by profession. All things considered, thus far most of the cities which have this form of administration, have not shown very striking improvements; the cities of Springfield and Jackson, however, have made considerable headway; and Dayton has achieved first-class progress.

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Constitutional Amendments and Referred Measures. Although 1915 was an off year for elections, in the nine States which held elections a total of forty constitutional amendments and legislative measures appeared on the ballots and were acted upon by the voters at the polls. As compared with the 1914 election when two hundred eighty-six such proposals found their way on the ballots in thirty-one States and forty-two per cent were adopted, this year only thirteen of the forty or thirty-two per cent were successful. This year's elections were confined with the exception of California to States in the northern half of the section east of the Mississippi River. Thirty-five of the measures were straight constitutional amendments referred by the legislatures including a new constitution in New York containing some one hundred thirty-three changes to the present basic laws which was submitted to the voters in three sections and all rejected. Four legislative acts, two in Ohio, and two in California were referred by petition and defeated, and a proposition for a $27,000,000 Canal Bond Issue won in New York State. Only two of the States holding elections, Ohio and California, have the initiative and no measures appeared in this way.

Preëminently among the issue stands out the defeated new constitution in New York which was framed by a constitutional convention in session four months during the summer of 1915. New York voted at a special election in the spring of 1914 in accordance with a constitutional provision that the question whether or not a convention shall be held, shall be submitted to the voters every twenty years, to hold a convention, and delegates to the convention were elected at the November election. The most important features of the new constitution were the proposals for a short ballot, in state administration, a limited form of home rule for cities, the establishment of a budget system, the power granted to the conservation commission and other matters of minor detail.

New York City was opposed to the constitution because complete home rule was not granted and because it did not change the old provision for the city's representation in the legislature. Under this provision New York county could not have more than one-third of the whole representation in the senate and New York City not more than one-half. Radicals were opposed to the constitution because it did not go far enough, making no provision for the initiative, referendum and recall, minimum wage, old age pensions and other social legislation.

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Labor organizations aligned against the basic law change because it considered the short ballot and executive budget proposals tending toward bureaucracy; because judges would be selected not elected; and because in the bill of rights there was no provision definitely declaring that no citizen should be subject to military courts while civil courts are open. The labor party stood for a separate submission of each proposition so voters could make their own selections or this not being conceded then labor's policy was to vote everything down. Teachers were against it because they believed that the home rule provision giving the city authorities complete control of the schools would place their pensions, salary schedules and tenure of office in jeopardy. Others viewed it with distrust as a patch work of the controlling political party with the result that the new constitution embracing much that was good met defeat.

More attention was given the problem of taxation than any other one subject, five States presenting some changes in their present system to the voters. Massachusetts adopted a classified tax on incomes. Maryland and Kentucky gave their general assemblies power to classify property for the purpose of taxation. The Kentucky amendment in addition exempts from taxation bonds of the State and of counties, municipalities, and taxing and school districts and also provides that laws passed pursuant to this subject be referred to the vote of the people if they so desire. An amendment prepared by the Illinois special tax commission of 1911 somewhat similar to the Maryland measure except that it provides for the classification of personal property only, while the Maryland amendment classified personal and real property, now awaits the decision of the Illinois voters. In New York the defeat of the new constitution killed an attempt to abolish indiscriminate and permanent exemptions from taxation and to equalize and harmonize assessments. An amendment giving the California legislature authority to classify property for taxation and also one exempting buildings used for church and social purposes from taxation failed. California voters also refused to deposit the State's public moneys in banks and allow the legislature by a two-thirds vote subject to a referendum or to the will of the people through the initiative, to provide conditions therefor. The legislature of New York State was not given power to reduce the rate of taxation so that no surplus would be piled up in case any rate of taxation previously fixed would if continued provide more than sufficient to pay the interest on the debt and the principle

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at maturity. Philadelphia now has a borrowing capacity of ten per cent instead of seven for financing permanent improvements and the city's sinking fund limit is extended to fifty years. Ohio will not exempt bonds of the State or any sub-division issued after 1916 from taxation.

The extension of suffrage to women was turned down at the polls in New York, Massachusetts, Pennsylvania and New Jersey with a majority against in New York of 188,313,[2] in Massachusetts of 133,447, in Pennsylvania of 55,686, and in New Jersey of 51,108. The New York constitutional convention did not take up the suffrage question because of the amendment already pending. South Dakota, Iowa and West Virginia will vote on the suffrage question in 1916.

The voters of Ohio registered a majority of 55,408 in favor of continuing the sale and manufacture of intoxicating liquor and furthermore declined to regulate the traffic therein as provided for in an act referred by petition.

Four States had something to say on the all absorbing topic of the initiative and referendum. Maryland was added to the list of States using the referendum in certain cases on laws passed by the general assembly. In the form presented the referendum can be invoked only on petition of 10,000 voters. It would seem that there would have to be widespread opposition to an act of the legislature to win so large a number of signatures against it. Nevertheless, it is a check upon the legislature and can be used when there is a real need for it and may serve as a restraint of the legislature in considering measures against which it might be invoked. Both Ohio and New Jersey failed to limit the initiative and referendum, the former State by limiting the elections on twice defeated constitutional proposals and otherwise prevent its abuse, the latter by permitting the initiations of a constitutional amendment in any year but providing that a matter once defeated cannot be brought up again for five years. Another proviso of the proposed New Jersey law required that every amendment should be voted on separately in direct contrast to the system in New York State where one hundred thirty-three provisions of the new constitution were submitted in three questions. In this case if a voter disapproved of a single proposed change in each of the three questions, in order to register his disapproval he was compelled to reject the other one hundred thirty changes many of which he may have heartily approved. An amendment in California providing

[2] Exclusive of Oneida County where returns are in litigation.

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that no law creating a bonded indebtedness shall be enacted by initiative by electors without the assent of two-thirds of the qualified electors voting thereon, and authorizing the legislature to protect the initiative and referendum petitions from fraud and misrepresentation was rejected. This year California rejected every proposal. In 1914 a huge ballot containing forty-eight proposals was given to the voter and of this number he selected twenty-seven for approval and defeated twenty-one.

A non-partisan government law was referred by petition and defeated in California providing that all offices should be non-partisan except United States senator, representatives in congress, congressional party committeemen, delegates to national party conventions and presidential electors and another defeated referendum measure dealt with the form of the ballot.

The several counties of Maryland and the City of Baltimore were authorized to create charter boards to prepare and submit charters for home rule to the voters of their sub-division for adoption or rejection. California failed to amend her county charter law to provide for election, appointment and tenure of all county officers, number of justices, constables and officers of inferior courts, qualification of all such officers if appointed and creation of additional boards, duties and officers.

The question of what to do with criminals came up in Kentucky and Maryland. In response the voters authorized Kentucky to employ her convicts on the highways of the State and gave the general assembly of Maryland power to enact laws for the suspension of sentence by the court, for any form of indeterminate sentence in criminal cases and for the release upon parole of convicts imprisoned for crime in whatever manner it may see fit.

Social legislation for the laborer was not omitted. The Pennsylvania workmen's compensation law is now compulsory with the employer instead of optional. The general court of Massachusetts at the next session will begin to provide for taking over land in country districts for the purpose of establishing homesteads for those who may wish to escape from the more congested quarters of the city. California voters defeated a measure that would improve her present rural credit system and Pennsylvania voted to incorporate the Torrens system of recording titles in real estate transfers.

Two States failed to pass amendments providing for excess condemnation of property. New Jersey proposed to allow the State, counties, and municipalities to condemn for public improvements

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more property than is needed and sell what is not used under restrictions that would require development along certain lines to insure the continued value and character of the improvement made. The California measure was very similar but also would permit the county or municipality to condemn lands within ten miles beyond its boundaries for certain public purposes with the consent of the other county or municipality if such lands lie within it.

Neither Ohio nor New York will have a new congressional apportionment on the basis of the last Federal enumeration, the referendum having been adverse. Ohio did not extend the terms of county officers to four years and California voted down the amendment making the term of office of the superior judges twelve years and also declaring them subject to recall, impeachment and removal proceedings. It was also proposed and defeated in California that when the term of office of a judge of the supreme court, district court of appeal or superior court expires on the first Monday in January following the election, the person appointed by the governor to fill the vacancy should hold for the remainder of the unexpired term for which such judge was elected or appointed.

In Connecticut an amendment increasing the pay of legislators by paying their railway transportation will apparently be ratified by popular vote when all the towns have voted. All except nine of the one hundred sixty-eight towns in the State voted October 4, 1915. Hartford, Bridgeport, New Britain and Ansonia did not have a fall election and are yet to vote. Returns from about one hundred forty of the one hundred fifty-nine towns that voted October 4, show a total of 13,993 for the amendment and 8432 against it.

A tabular presentation of the results of the year's constitution making by popular vote follows:

SUBJECT OF AMENDMENT	STATE	VOTE	
		For	Against
Taxation, finance, etc.	N. Y. (in new constitution)	346,922	924,571
Taxation, finance, etc.	Mass. (classified Income Tax)	269,871	97,856
Taxations, finance, etc.	Ky. (classification)	67,449	35,467
Taxation, finance, etc.	Md. (classification)	49,918	26,722
Taxation, finance, etc.	Cal. (classification)	42,158	205,597
Taxation, finance, etc.	Cal. (exempting property)	94,460	168,171
Public money	Cal. Deposit of Public Moneys	92,981	151,845
Bonds	N. Y. $27,000,000 Canal Bond Issue	625,159	580,242
Bonds	N. Y. Altering rate of interest on state debts	430,423	725,784
Bonds	Pa. Enlarging Phila's borrowing capacity	361,188	191,004
Bonds	Ohio Exempting bonds from taxation	337,124	401,083

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SUBJECT OF AMENDMENT	STATE	VOTE	
		For	Against
Suffrage	N. Y.	553,348	748,332
Suffrage	N. J.	133,282	184,390
Suffrage	Pa.	385,348	441,034
Suffrage	Mass.	162,492	295,939
Prohibition	Ohio	484,969	540,377
Regulating Liquor Traffic	Ohio	242,671	355,207
I., R. and R.	Md. Referendum	51,880	24,659
I., R. and R.	N. J. Limiting Initiative	137,092	162,108
I., R. and R.	Ohio Limiting I. and R.	417,384	482,275
I., R. and R.	Cal. Limiting I. and R.	121,210	127,160
Elections, charters	Cal. Non-partisan government law	112,681	156,967
Elections, charters	Cal. Form of ballot law	106,377	151,167
Elections, charters	Md. Charter boards (home rule)	50,436	25,160
Elections, charters	Cal. County charters (home rule)	85,571	152,697
Criminals	Ky. Convict labor	81,739	37,855
Criminals	Md. Parole, indeterminate sentence and suspension of sentence	49,338	25,886
Workmens' Compensation	Pa.	487,135	174,168
Homestead Act	Mass.	284,568	95,148
Excess condemnation of property	Cal.	92,048	155,786
Excess condemnation of property	N. J.	125,206	173,755
Torrens Act	Pa.	353,686	178,567
Rural credits	Cal.	124,247	132,320
New Congressional Apportionment Act	Ohio	271,987	329,095
New Congressional Apportionment Act	N. Y. (new constitution)	361,270	874,690
Terms of officers	Ohio 4 years for county officers	207,435	604,463
Terms of officers	Cal. Superior judges	47,229	213,067
Terms of officers	Cal. Term of judges filling vacancies	124,610	125,124
Pay of legislators	Conn.	Carried	
Constitution	N. Y. New constitution	388,966	893,635

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Legislative Reference. The legislative sessions of 1914 and 1915 resulted in few radical changes in the general policy of legislative reference work. Four new legislative reference libraries were authorized by statute—in Arizona,[3] New Jersey,[4] North Carolina,[5] and Virginia;[6] and in New York, an act of 1915[7] created a separate legislative library under the control of the legislature which is however not intended to do legislative reference work. The Library of Congress has, for the last two years, been granted a specific appropriation of $25,000 a year for legislative reference work for the members of Congress.[8]

In reviewing briefly the new state laws cited above, it is taken for granted that it is unnecessary to dwell on the accepted and familiar details of legislative reference work, the aim being to emphasize the points less generally embodied in the laws on the subject and to bring out any new phases introduced by recent legislation.

The Arizona law establishes a state library under a board of three curators appointed by the governor with the advice and consent of the senate, to serve for six years, a new member appointed biennially. The curators select a librarian with the title "law and legislative reference librarian," at a salary of $2400 a year. The legislative reference bureau which the library is authorized to establish and maintain, constitutes the predominating feature of the library and the duties of the librarian as outlined are largely those of the average legislative reference librarian with specific duties as to,—the maintenance of a loose-leaf file of the statutes; digests of court decisions; compilations of the statutes in whole, or in part at the request of a head of a state department; formulation of plans for the arrangement and printing of the session laws; preparation of consolidations and revisions of laws for submission to the legislature; and bill drafting for the governor, heads of departments and members of the legislature. The library fund consists of the fees collected and paid into the state treasury by the clerk of the supreme court.

In New Jersey, $1000 was appropriated to the state library, in both 1914 and 1915, to be expended for legislative reference work in the

[3] Laws, Reg. Ses., 1915, p. 134.
[4] Laws, 1914, p. 43, 44.
[5] Laws, 1915, p. 247.
[6] Laws, 1914, p. 313.
[7] Laws, 1915, p. 1447.
[8] Acts, 63d Congress, sess. 2, ch. 141, 1914, p. 463; sess. 3, ch. 141, 1915, p. 1005.

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library. A separate statute of 1914 created the office of "legislative adviser and bill examiner," at a salary of $1500, the incumbent to work in conjunction with the legislative reference department of the state library. Both appointment and power of removal are vested in the attorney-general but only a counselor at law is eligible to the office. The duties of the legislative adviser and bill examiner include: bill drafting, examination of bills, amendments, etc., to avoid repetition and unconstitutional provisions and to insure accuracy, clearness and consistency with existing statutes, and advice as to constitutionality, consistency or effect of proposed legislation.

The newly created legislative library of New York State is to be established and controlled by joint rules of the senate and house. The librarian and his two assistants are selected by the president of the senate and the speaker of the house, to serve until their successors are chosen in like manner. All the books, papers, records and documents of the previously existing senate and assembly libraries with all their equipment are transferred to the legislative library and it is presumably to the preservation and custody of this material that the duties of the new library are to be directed rather than to legislative reference work in the accepted meaning of the term. During any vacancy in the office of librarian, the assistant longest in service as a legislative employe, serves as librarian and receives his salary which is $3600 a year. Assistants receive $6 per day. The library is to be open the entire year.

The preamble to the North Carolina act authorizing the state historical commission to establish a legislative reference library, calls attention to the fact that thirty-four states have already demonstrated the usefulness and economy of such work. The librarian is appointed by the historical commission and his services are open to county and city officials as well as members of the general assembly and state offices on all questions of state, county and municipal legislation. One of his specified duties is to keep up to date the revision of the statutes of 1909. The annual appropriation for the library is $5000. The North Carolina historical commission, created by an earlier statute, consists of not more than five members appointed by the governor as their various terms expire and each serving a period of six years.

In Virginia, the governor appoints the director of the legislative reference bureau, with the approval of the senate, to hold his office for five years unless the governor removes him for cause. The director

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must be a graduate of a school of law of some college or university approved by the governor, have been a student of political science for at least twelve months and have had experience in bill drafting. The appointment must be made solely on the grounds of fitness for the office without reference to party affiliations. The director is enjoined from practicing law or engaging in any other occupation. He employs his assistants, selecting them for their fitness for the work, and fixes their compensation. Access to both law and state libraries is accorded the staff of the new bureau and the state librarian is authorized to assign any of the employes of the state library to the bureau during the session. The program of work outlined includes the usual assembling of a library, reference work and bill drafting for the governor and members of the legislature, all requests for the drafting of bills to be submitted in writing. During the session, the presiding officer of the two houses may determine what extra hours the bureau shall be kept open. $5000 is the total annual appropriation and the salary of the director is fixed at $2500.

In Pennsylvania,[9] the legislative reference department was authorized to continue its work of codifying the laws, with an appropriation of $10,000 for the work.

A provision attached to the Nebraska appropriation act of 1915,[10] prohibits the Nebraska legislative reference bureau from drafting any bill or resolution except on the written request of a member or a committee.

A partial revision of the Vermont law[11] changes the two revisors of statutes to legislative draftsmen, appointed by the president of the senate and the speaker of the house, the chief justice of the supreme court to have the deciding vote in case of a disagreement. In place of the provision of 1912 that no bill could be acted upon by either house unless endorsed by the revisors of statutes, the legislative draftsmen assist in bill drafting only on request and perform for the legislature the duties of a committee on revision of bills only when by joint rules the legislature does not provide that such committee be otherwise constituted. The draftsmen meet for work during the legislature and the thirty days prior to the session and whenever called upon by the president of the senate and the speaker of the house. The draftsmen are authorized to employ, at the expense of the state,

[9] Laws, 1915, p. 475.
[10] Laws, 1915, p. 630.
[11] Laws, 1915, p. 74.

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necessary clerical and stenographic assistance subject to the approval of the president of the senate and speaker of the house.

The submission of proposed initiative measures to the legislative reference department was made possible in Ohio by an act of 1914,[12] on the petition of ten electors. In California[13] a similar provision requires 25 signatures before the proponents of initiative legislation may submit their measures to the scrutiny of the legislative counsel bureau.

In the message of the governors delivered to the various state legislatures in 1915, Governor Hunt of Arizona recommended the creation of a bureau of municipal research; Governor Miller of Delaware expressed the desire that his State follow the example of New Jersey and appoint a bill examiner; Governor Dunne of Illinois in discussing the Illinois bureau created in 1913, dwelt particularly on the importance of its preparation of the budget; and Governor Byrne of South Dakota commended the work accomplished by the legislative reference department of the department of history. On the other hand, Governor Philipp of Wisconsin urged the abolition of the legislative reference library and an attempt, which proved a fiasco, was made by the legislature of 1915 to abolish the library along with similar attempts against the tax commission and the board of public affairs.

A small document from Massachusetts of interest in this connection is the report made to the governor and the board of trustees of the state library by the committee which recently visited Madison, Wis., to examine the Wisconsin legislative reference bureau and bill drafting department. For several years there has been contention in Massachusetts as to the advisability of establishing a legislative reference department in the state library and a bill drafting department for the use of the legislature. This report discusses the Wisconsin bureau with Massachusetts conditions in mind and includes in its recommendations the employment of a legislative reference librarian to act as assistant state librarian and the establishment of a bill drafting department under the direct control of the legislature. Nothing was accomplished, however, to put these recommendations into effect.

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[12] Laws, 1914, p. 120.
[13] Laws, 1915, p. 50.

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Absent Voting. There has been rapid spread during the last four years of the idea of giving absent electors a chance to vote by mail. Prior to 1913 only one State—Kansas—had adopted the method. During the sessions of 1913 the States of Minnesota, Missouri, Nebraska and North Dakota passed laws to permit absent voters to vote by mail. In 1915 Colorado, Iowa, Michigan, Montana, Vermont, Wisconsin and Wyoming passed similar acts. The electors in California in 1914 rejected an absent voters' act by a vote of 244,855 in favor and 390,337 against, while Michigan voters adopted a constitutional amendment permitting absent voting by certain classes by a vote of 190,510 for to 175,948 against.

In the States of Iowa, Michigan, Wisconsin, North Dakota, Nebraska, Montana, Minnesota the absent voting provisions apply to primaries as well as elections. There has been quite general expansion of the idea of registration by mail and many states now provide a method for doing so. Thus, it is possible in several states to register, and vote at the primaries and at the general election without appearing in person.

The Colorado law provides that the voters must appear at the polls in the precinct where he happens to be and there present his certificate of registration and be identified by one or more resident voters in the precinct. He must make an affidavit stating his qualifications to vote and that he is unable to vote in his home precinct. The vote of any such person is sealed in an envelope and forwarded to the election officials in the county in which the elector resides. The votes are kept separate until the convassing boards meet when they are added to the tally sheet.

In Iowa the voters may make application to the auditor of his county or the clerk of the city or town by mail not more than fifteen days nor less than three days or may appear in person not more than ten days nor less than one day before the election stating that he will be unavoidably absent from the county on the day of election and that he desires to vote. Upon receipt of the application, the auditor or clerk mails a ballot to the elector. The voter must sign an affidavit and mark his ballot in the presence of the person taking the oath, fold the same and securely seal it in the presence of such officer and mail it by registered mail to the officer from whom the ballot was obtained. The ballots so received are delivered to the judges of election on election day and if found to be correct, the ballot is counted with the other ballots.

The legislature of Michigan in 1915 carried the constitutional pro-

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Presidential Primaries. A comprehensive review of the history of the presidential primary was published by Prof. Francis W. Dickey in THE AMERICAN POLITICAL SCIENCE REVIEW for August, 1915. The importance of the subject at this time when delegates are being elected to the national party conventions warrants a treatment of the details of the various laws.

Twenty-three States now have either the presidential preference primary or the election of delegates to national conventions by direct vote. To indicate the importance of the primary at this time, the following table is submitted giving the States and the number of delegates from each who will either be chosen by direct primary or who will be morally bound by the preference vote for president.

California	26	New York	90
Illinois	58	North Dakota	10
Indiana	30	North Carolina	24
Iowa	26	Ohio	48
Massachusetts	36	Oregon	10
Maryland	16	Pennsylvania	76
Michigan	30	South Dakota	10
Minnesota	24	Texas[1]	40
Montana	8	Vermont[2]	8
Nebraska	16	West Virginia	16
New Jersey	28	Wisconsin	26
New Hampshire	8		

In all a total of 664 delegates out of approximately 1080[3] will be subject to direct primaries.

The following States have a presidential preference vote by which the name of the president will be placed upon the ballot for the expression of the will of the voters: Illinois, Indiana, Iowa, Massachusetts, Maryland, Michigan, Minnesota, Montana, Nebraska, New Jersey, North Carolina, North Dakota, Oregon, Ohio, Pennsylvania, Texas, Vermont, West Virginia and Wisconsin.

The following States have a preference vote for vice-president: Indiana, Iowa, Massachusetts, Minnesota, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oregon, Texas and Wisconsin.

Six States elect national party committeemen by direct primary, namely: Iowa, Nebraska, North Dakota, South Dakota, Oregon and Michigan.

[1] Primary optimal with parties casting less than 50,000 votes.
[2] Referendum in March determines whether the law takes effect this year.
[3] On basis of representation in 1912.

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vision into effect by a law which gives the right to vote by mail to electors in the military service in the State or Nation in time of war, insurrection or rebellion; members of the legislature in session; students and commercial travelers. Such an absent voter must make application to the township, village or city clerk requesting a ballot in a manner similar to that in Iowa. The clerk mails or delivers a ballot to the elector with directions. He must make an affidavit and deposit the ballot in the mails addressed to the clerk from whom he received it. The clerk holds the ballot until election day and delivers it to the election officials who deposit it in the ballot box after satisfying themselves that it is a valid vote.

The Montana act provides that an absent elector may make application to the county clerk at least thirty days before an election and the clerk shall furnish to such elector a ballot. The elector makes an affidavit and encloses the ballot in an envelope in the presence of the officer taking the oath and mails the same to the clerk. The ballot is delivered by the clerk to the election judges. Considerable detail is added in this act to prevent fraud.

The Vermont law provides that any legal voter may vote for state officers, United States senators and electors in the state in which he resides, if he files with the clerk of the town in which he desires to vote a certificate from the town of his legal residence stating that he is on the check list of voters in said town.

The Wisconsin law is very similar to the laws described above, requiring that the elector make application to the clerk of his own county for an official ballot. The clerk issues a ballot to such elector and the elector makes an oath of his qualifications and marks the ballot, places it in an envelope and seals the envelope in the presence of the officer taking the oath and mails the same by registered mail to the officer issuing the ballot. This ballot is delivered to the election officers and is deposited the same as though the elector were present.

The Wyoming law gives a person a right to vote in the place where he may be present on election day. The elector must first obtain a certificate showing that he is registered in his own precinct and make a sworn application to the registration agent or county clerk asking for a certificate showing that he is entitled to vote. With this certificate the voter goes to the polls in the place where he may be on election day and casts his ballot in the manner similar to that in Colorado. The election officials send such vote to the clerk of the county in which the voter resides where it is canvassed the same as in Colorado.

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Delegates to the national conventions are elected by direct vote in the following States: California, Iowa, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New Hampshire, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Texas, West Virginia and Wisconsin. Illinois elects delegates at large but not district delegates. Indiana, Maryland, Michigan, North Carolina and Vermont do not elect delegates at the primaries. The States of Iowa, Massachusetts, Minnesota, Montana, Nebraska, North Dakota, New Jersey, New Hampshire, New York, Ohio, Oregon, Pennsylvania, Texas, Wisconsin and West Virginia elect four delegates at large and the remainder by congressional districts.

The dates of holding the primary in various States in 1916 are as follows:

California	May 2	New York	April 4
Illinois	April 11	North Carolina	June 3
Indiana	March 7	North Dakota	March 21
Iowa	April 10	Ohio	April 25
Massachusetts	April 25	Oregon	April 21
Maryland	May 1	Pennsylvania	May 16
Michigan	April 3	South Dakota	June 6
Minnesota	March 14	Texas	May 23
Montana	April 21	Vermont	May 16
Nebraska	April 18	West Virginia	June 6
New Jersey	May 23	Wisconsin	April 4
New Hampshire	March 14		

Seven States provide for absent voting at the primaries, namely: Iowa, Michigan, Minnesota, Montana, Nebraska, North Dakota and Wisconsin.

Candidates for president get their names on the ballot in each State by filing a petition with the secretary of state. The petitions are signed as follows: In Illinois by 1000 to 2000 electors; Indiana 500 or more; Massachusetts 250 to be drawn from at least four counties; Michigan 100 signers; Minnesota 2 per cent of the total vote at the last election but not exceeding 500 signers; Montana 2 per cent of the party vote not exceeding 100 signers in each of one-tenth of the precincts in each of seven counties; Nebraska 25 electors or by the candidate himself; New Jersey at least 1000 signers; North Dakota 1 per cent of the party vote at the last election or at least 500 party voters; Ohio 2 per cent of the electors of the party at the last election; Oregon 1000 party supporters; Pennsylvania 100 electors taken from 10 counties; South Dakota 1 per cent and not more than 3 per cent of the party voters;

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Texas 25 signers or upon request of the candidate himself; Vermont 500 signers; Wisconsin 1 per cent of the voters in at least each of six counties and in the aggregate not more than 10 per cent of the total vote of the party; the candidate may get on the ballot without petition by filing a statement of candidacy in Iowa, Maryland, Nebraska, North Carolina, Texas and West Virginia. A fee is required to be paid in Maryland and Oregon. The Indiana law had a provision for a fee but the supreme court has declared the provision void. Candidates for delegates in all other States must file their candidacy either with a petition or without. The provisions relating to the filing of the names for president apply also to the candidate for vice-president in States in which the vice-president is voted for.

One of the most important matters connected with presidential primaries is the attempt to make the action of the voter binding upon the delegates who come to the convention. California gives the opportunity as delegates to declare their preference for nominees for president. The statement reads as follows:

"I personally prefer ———— as nominee of my political party for President of the United States and hereby declare to the voters of my party in the State of California that if elected as delegate to their National Party Convention, I shall, to the best of my judgment and ability support said ———— as nominee of my party for President of the United States."

Candidates for delegates may go on the ballot under heading "No Preference."

Candidates for delegates at large in Illinois may have the name of the candidate for whom they have expressed preference placed under their name or they may have the words: "No preference."

Delegates in Indiana are instructed to vote as a unit for the candidate nominated "as long as his name shall be before the convention."

In Iowa two questions are placed upon the ballot. The first, whether the sentiment of the State should control the delegates or second, whether the sentiment of the district should control the delegates. The results are intended to be normally binding upon the delegates elected.

The candidates in Massachusetts may sign a pledge to support the candidates of the people's choice.

In Maryland delegates are bound by the will of the convention which elects them to vote as a unit for the popular choice of the State as long as there is a chance of his being nominated. In the scheme of electing

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delegates to the state convention which in turn elects the delegates to the national convention in Maryland, it is provided that any county or district may vote for or against an "instructed delegation."

Michigan declares the candidate receiving the largest number of votes as the choice of the political party of the State.

Delegates in Minnesota file with their petition a statement that they will be to best of their judgment and ability faithfully carry out the wishes and preferences of the voters of their party. Delegates in Montana make a similar statement.

In Nebraska the delegates are expected to follow the will of the people and the secretary of state is required to grant certificates of election to national delegates on which shall show the number of votes received by each candidate for president and vice-president.

Candidates for delegates in New Jersey may have the name of their presidential favorite placed opposite their name or candidates may group themselves and have the name of the candidate placed opposite the group.

In New Hampshire, delegates may make a statement pledging themselves to vote for certain candidates for president.

The North Carolina law declares that all delegates shall be bound by the majority of the votes or in case there is no majority, then of the plurality of votes.

Delegates in North Dakota take an oath faithfully to carry out the wish of their political party as expressed by the voters.

Candidates for delegates in Ohio are required to file a statement of their first and second choice for nomination for president and no petition may be filed without this statement.

In Oregon, the delegates make a written statement that to the best of their efforts, they will bring about the nomination of those persons for president and vice-president who receive the largest number of votes at the primary.

Delegates in Pennsylvania have three choices: they may promise to support the popular choice of the party in the State or in the district or they may declare that they do not promise to support any particular persons.

The South Dakota law requires that the candidate for president be endorsed by the party and the endorsement shall have the effect of pledging the delegates to support the candidate.

The Texas law states that the candidates receiving the largest number of votes shall be considered the first choice of the delegates.

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Vermont requires that the vote for candidates of his party be certified to the delegates.

West Virginia requires that the candidate for delegate shall file a statement as to whether or not he will support the popular choice of such primary for president.

In Wisconsin the nomination papers of any delegate may contain a statement of the principles and candidates favored.

Legislative Organization and Procedure. The wide-spread criticisms of state legislatures as well as constructive proposals of reform have, as a rule, been centered upon the form and functions of those bodies. The more intimate matters of internal organization and procedure have been neglected. Two States—Massachusetts and Nebraska—have within recent time caused to be made careful studies of their respective legislatures along the latter lines with a view to internal reform.

The Massachusetts general court at its session in 1915 received the report of a recess committee suggesting improved methods in the preparation and presentation of and procedure upon bills to the end of shortening sessions, reducing expenses and improving the quality of the legislative product. Suggestions were also called for of means of reducing the number of special and local acts passed at each session.

The report which was made after a very full investigation into the procedure in other States and conferences with legislators, officials and citizens is of interest not only for the facts brought out and the recommendations made, but also for its rejection of various devices which have met with wide acceptance elsewhere. An immediate cause of the investigation is set forth in tables showing the length of session, number of measures introduced and measures passed at each session since 1880. In but one year since 1890 has the annual session lasted less than 150 days. The number of bills has increased from 648 in 1880 to 879 in 1890; 1734 in 1900; 2240 in 1910; and 3459 in 1914. In like manner the total of acts and resolutions passed has risen from 330 in 1880 to 956 in 1914.

The first part of the report is devoted to suggestions for expediting and improving the quality of the work of the legislature. General preliminary consideration is given to the question of limited sessions and of biennial elections and sessions. To limit the length of sessions it was believed would but aggravate the evil of hasty legislation but while making no formal recommendation thereon, the committee endorses the proposal for biennial elections and sessions.

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Proceeding to more detailed matters of procedure, various means of limiting the initiation of measures, which in Massachusetts is always by petition, are taken up. Suggestions that a measure which is in substantial conformity with one rejected at the preceding session be not acted on; that the number of measures to be sponsored by any member be limited; that a fee be required upon filing a petition for legislation; and that some sort of preliminary censorship analagous to that imposed upon private bills in England, are one by one considered and rejected as unduly restricting the right of petition or are passed on to the legislature without recommendation. The only recommendation under this head is that all petitions, i.e., proposed bills, be filed with the clerks three weeks before the opening of the session to be by them printed and referred to committees prior to the opening of the session so that the present delay of three or four weeks now spent in the session upon the introduction of measures might be avoided.

This suggestion bears also directly upon the second general consideration—that of expediting the work after its introduction since by this the first reading by title and reference by the chair would be dispensed with. The repeal of the rule requiring the reading of reports of committees is recommended since printed copies are provided. Since in thirty-four States a roll call is required on the final passage of every measure and in twelve states any two members may procure a roll call, the Massachusetts requirement of a demand by one-fifth of those present in the senate and by thirty members in the house is as far as it is deemed wise to go in this direction in the interests of expedition. Time in committee work is already so economized through the system of joint standing committees of which there are thirty, that only minor changes in committee organization are suggested. It is, however, proposed that a roll call of attendance at committee meetings be kept and published weekly and provision made for removal of delinquent members from committees.

Procedure at hearings should be standardized in the interests of economy of time and for the convenience of parties. The practice of requiring committees to report on every matter referred to them which Massachusetts shares with twenty-four other States is found to be an unjustifiable consumer of time. In 1914, 1431 matters were reported back adversely by unanimous vote of committee and the injection of these matters into the calendar served no purpose other than to give proponents an opportunity to talk on measures doomed to defeat. It is proposed to permit committees to withhold report of any measure upon unanimous vote.

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Turning to the improvement of the quality of the legislative output the committee finds an index of its defective character in the fact that in each of the last five volumes of Massachusetts reports from thirty to fifty cases involve actual interpretations of statutes, and in the further fact that the general laws of 1914, for example, worked no less than sixty-six changes in its own acts and 317 in those of the four previous sessions.

In considering the remedies for "ill-considered and poorly-drafted" laws the work of legislative reference libraries is commended but the union of such bureaus with bill-drafting offices is opposed. Says the committee: "We do not believe in organizing another department for the use of anybody who desires every sort of a fool bill drafted. . . . If a man desires legislation, let him present his own petition and draw his own bill." The committee favors the appointment of a non-partisan, permanent "clerk of committees" to whom should be referred all bills for revision or approval before being reported back by committees.

In proceeding, in the second part of its report, to a consideration of the burden imposed on the legislature by the mass of special and local bills, which in 1914 rose to the number of 392 exclusive of appropriations and resolutions of a special or local nature, the committee quotes at length and with evident approbation the section of the Pennsylvania constitution limiting special and local legislation but makes no recommendation thereon. The remedies suggested are: first, that the general laws on a variety of subjects particularly those relating to municipal corporations, private corporations and highways be so broadened as to obviate the necessity of much special legislation; second, that the budget system be introduced as a substitute for the many appropriation acts which in 1914 numbered 121; third, and perhaps to be combined with the foregoing, that a standardization of salaries and provisions under general laws be made so that the number of bills introduced carrying special compensations other than regular salaries, pensions, annuities and other personal payments which in 1914 reached 199 might be materially reduced or eliminated, and, fourth, that no special measure plainly within the field of existing administrative departments should be considered unless it has first been submitted to the appropriate department for action.

A summary of the recommendations of the committee is presented in a series of thirty-eight proposals and their substance is embodied in a series of twenty bills, two resolutions and nine rules suggested for legislative action.

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Another investigation on the same subject is that made by a legislative committee in Nebraska for presentation to the last session of the legislature. The recommendations of this committee together with a mass of information not hitherto easily available are published in Bulletin No. 4 of the Nebraska Legislative Reference Bureau. The proposals submitted for immediate adoption are detailed in character and cover five subjects, viz., bills, legislative publications, printing, committees, and employes. Among those offered under the first head are provisions for indicating in amendatory bills what matter is new and what is to be stricken out; the substitution of typewriting and printing for long hand copying of engrossed and enrolled bills; the establishment of a bill-drafting bureau in connection with the legislative reference bureau, which it will be noted is in direct contradiction of the Massachusetts proposal, and in order to check the indiscriminate introduction of bills, that no member shall introduce a measure which he is unwilling to endorse and defend. With respect to committees, it is proposed to reduce the number in the house from 47 with a membership of 486 to 28 with a membership of 238; that measures be taken to secure a more systematic holding of committee meetings, and that a public record be kept of votes taken in committees. The committee's recommendations concerning legislative employes would reduce the number from 168 to 57 thereby reducing this item of expense by two-thirds without impairing the service.

Further recommendations for action at a future time include the substitution of a single-chambered legislature; the adoption of civil service rules for legislative employes; the introduction of a state budget system; and an efficiency survey of the state government with a view to the consolidation of administrative departments.

Indiana University. FRANK G. BATES.

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NEWS AND NOTES

PERSONAL AND BIBLIOGRAPHICAL

EDITED BY CHARLES G. FENWICK

Bryn Mawr College

The REVIEW will be pleased to purchase at one dollar apiece, copies of the following of its issues: vol. III, nos. 1, 2, 3, 4; and vol. VI, nos. 1 and 2.

Prof. Charles A. Beard, of Columbia University, will deliver the Clark Memorial lectures at Amherst College this year. His general subject will be "Economics and Politics."

Prof. Walter Shelden Tower, of the University of Chicago, gave a series of lectures on Latin America at the University of Wisconsin in December.

President C. R. Van Hise, of the University of Wisconsin, has been appointed by President Wilson a member of the commission to investigate the slides at the Panama Canal.

A short course for business men is planned for the coming spring by the Extension Division of the University of Wisconsin. The object is to bring together business men from all parts of the State for the discussion of problems of credit, marketing, salesmanship and business law.

Prof. Nicholas M. Goldenweiser, of the University of Moscow, delivered a series of lectures on Russia at the University of Wisconsin during the first semester.

Prof. Archibald C. Coolidge, of Harvard University, will give the Barbour-Page lectures at the University of Virginia in February upon questions bearing upon recent European history. The lectures on "The Presidency" by ex-President Taft, who lectured upon this foundation last year, will soon be published by Scribners.

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H. A. Toulmin, Jr., author of the volume on *The City Manager* in the National Municipal League Series, will lecture on that subject at the University of Virginia in February.

Courses in commercial law and international law are being given for the first time at the University of Virginia by F. J. Hyde, instructor in the Law School and Lindsay Rogers of the School of Political Science, respectively.

Prof. David P. Barrows, of the University of California, is taking sabbatical leave and plans to spend the time in Europe. His course on the Far East will be given by Prof. Payson J. Treat of Stanford University, who will also conduct a seminar on Foreign Relations.

Mr. John A. Lapp, director of the Indiana Bureau of Legislative Information and non-resident lecturer at Indiana University, gave a course of lectures at that university on "Practical Law-making" during the first semester. During the second semester Mr. Lapp will give a course of lectures on "University Training for Public Service."

The new Harris Hall of Political Science, which is to house the departments of History, Political Science and Economics at Northwestern University was dedicated on December 1, 2 and 3. Papers were read by Prof. A. C. McLaughlin on "History as a Public Utility," by Prof. Richard T. Ely on "The Development of Economics in its Relation to the Problems of Government," by Dr. F. A. Cleveland on "Responsible Leadership: an Essential to Efficient Democracy," by Prof. W. W. Willoughby on "Scientific Method in the Study of Politics," by President Edmund J. James on "The Relation of the Study of Political Science to Government and Citizenship," and by Prof. G. S. Ford on "Historiography in Historical Training."

Prof. N. Dwight Harris, of Northwestern University, has been given leave of absence during the second semester and expects to spend the time in a trip to Japan, China and Korea.

Dr. Edwin M. Borchard, law librarian of the library of Congress, returned early in December from a six months' trip in South America. During the trip he gathered for the library of Congress, principally as gifts from the governments of South America, several thousand valuable

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official documents, consisting of more or less complete sets of the official gazettes, statutes, and executive decrees, court reports, annual reports of the various ministries, collections of treaties, and other miscellaneous documents. He also purchased the best legal literature of the South American countries and made the preliminary studies in each country in preparation for the publication of a "Guide to the law and legal literature of Latin-America," which the library hopes to publish in about a year's time. Mr. Borchard also studied in South America on behalf of the Department of Commerce the commercial laws and civil procedure of South America, and the results of his study are soon to be published in a monograph to be issued by the Department of Commerce.

A Digest of Workmen's Compensation Laws in the United States and Territories, with annotations and revised to December, 1915, has been compiled and is for sale ($2) by the Workmen's Compensation Publicity Bureau.

The National Civil Service Reform League held its thirty-fifth annual meeting at Philadelphia, December 2.

The *Law Magazine and Review* announces that "owing to insuperable difficulties in connection with the circulation of the magazine arising from the war, and to the fact that the editor has received an active service appointment, it has been decided to suspend publication for the period of hostilities."

The fourth annual meeting of the Conference on Legal and Social Philosophy was held at Columbia University, November 26 and 27. The following papers were read: Real and Ideal Forces in Civil Law, by M. R. Cohen; Extra Legal Force in Criminal Law, by E. C. Keedy; Law and Force in International Affairs, by S. P. Orth; The Exercise of Force in the Service of Freedom, by Felix Adler; Force and Violence, by John Dewey; The Sovereignty of the State, by Harold Laski; and The Limits of Effective Legal Action, by Roscoe Pound.

Strenges and Walton have published a collection of documents on naval warfare during the present war, under the title *The Protection of Neutral Rights at Sea*. Prof. W. R. Sheperd furnishes a short introduction.

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The September, 1915 issue of *Municipal Research*, published by the Bureau of Municipal Research of New York City, is devoted to a discussion of the "Administration of the Indian Office."

P. S. King and Son, of London, have recently published a valuable volume on *English Public Health Administration*, by B. G. Bannington. An introduction is furnished by Graham Wallas. The same publishers announce a volume on *The Rise of Rail-Power in War and Conquest, 1833–1914*, by Edwin A. Pratt.

The annual meeting of the National Civic Federation was held in Washington, D. C., January 17 and 18 and, among other topics, discussed the legal and moral obligations resting upon foreign-born citizens of the United States, and the present and prospective effects of the war upon immigration to the United States. A plan was presented for the organization of a commission to study the question as to how far it is expedient that the government in this country should undertake private industrial enterprises.

The Chamber of Commerce of the United States is making a campaign in favor of a permanent tariff commission based on an almost unanimous opinion in favor of such an institution obtained through a referendum conducted by the Chamber in 1913.

The Madison, Wis., Board of Commerce has issued a *Recreational Survey*, the first of its kind, dealing in detail, and illustrated by maps, showing the needs and the present and possible facilities of the city for play and recreation for children. The investigation, upon the results of which this *Survey* is based, was under the direction of a committee headed by C. W. Hetherington, professor of physical education at the University of Wisconsin.

The National Municipal League, through the generosity of Hon. Morton Denison Hull of Chicago, has established an annual prize of $250 to be awarded for the best essay on a subject connected with municipal government. The competition is open to post-graduate students who are, or who have been within a year preceding the date of the competition, registered and resident in any college or university of the United States offering distinct and independent instruction in municipal government.

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Any suitable subject may be selected by a competitor provided it be submitted to the Secretary of the League and approved by him at least thirty days before the time set for the close of the competition. But no preliminary approval is required in case selection is made from the following list of suggested subjects:

1. The history of municipal government in the United States during either one of the following periods: (a) from the Revolution to the Civil War; (b) from the Civil War to the present time.
2. The charter and the practical workings of government in any American city having a population of 50,000 or over.
3. The legal problems involved in the home-rule charter, with special reference to the experience of those states in which the system has been in operation.
4. The problem of sewage disposal in American cities.
5. Public utilities' commissions, with special reference to the control of municipal public utilities in any State of the Union.
6. Municipal accounting and budget-making, with special reference to the actual results derived from the use of new and uniform methods.
7. Municipal public health agencies.
8. The development, present extent and actual results of municipal ownership and operation of public utilities in American cities.
9. Nomination methods and election machinery in cities, with special reference to ballot reform.

Further particulars may be obtained by addressing Edmond M. Sait, North American Building, Philadelphia, Pa.

The Council of the National Municipal League has selected "Efficient Billboard Regulation" as the topic for the William H. Baldwin Prize for the year 1916. The competition is open to undergraduate students registered in a regular course in any college or university in the United States offering direct instruction in municipal government. Further particulars may be obtained by addressing Mr. Sait.

The committee to whom was assigned the decision upon the merits of the papers contesting for the prizes offered by Messrs. Hart, Schaffner & Marx, of Chicago, for 1915, has agreed upon the following award:

Class A. 1. The first prize of one thousand dollars to Yetta Scheftel, A.B., Northwestern University, 1906, graduate student in the University of Chicago, for a paper entitled "The Taxation of Land Value: A Study of Certain Discriminatory Taxes on Lands." 2. The second

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prize of five hundred dollars to Homer B. Vanderblue, A.B., Northwestern University, 1911, Ph.D., Harvard University, 1915, for a paper entitled "Railroad Valuation." 3. Honorable Mention to Edwin G. Nourse, A.B., Cornell University, 1906, Ph.D., University of Chicago, 1915, for a paper entitled "The Chicago Produce Market."

Class B. 1. The first prize of three hundred dollars to Nathan Fine, undergraduate in the University of Chicago, for a paper entitled "The Business Agent of the Building Trades Unions of Chicago." 2. The second prize of two hundred dollars to Robert L. Wolf, undergraduate in Harvard University, for a paper entitled "Some Aspects of the Theory of Value."

The REVIEW is pleased to publish at the suggestion of Mr. J. I. Wyer, Jr., director of the New York State Library, the following memorandum with reference to the Digest and Index of Legislation.

"From 1890 through 1908 the New York State Library issued its 'Comparative summary and index of state legislation." Manuscript for 1909–10 was destroyed in the fire of 1911, and the pressure of imperative organization and restoration has prevented the publication of any number since 1908, though considerable work has been done upon the index for each of the last five years. This more urgent work continues and it is now clear that the state library will be unable unaided to bring up the heavy arrears of the "Index to legislation" or to continue it.

There exists a long and useful series of subject bibliographies, both printed and typed, from the Library of Congress; the service from the Public Affairs Information Bureau; the service of the Law Reporting Company; many competent annual reviews of legislation in special fields, such as the National Tax Association in the proceedings of its annual conference, the American Labor Legislation review, the Good Roads year-book, the Bankers encyclopedia; legislative reference departments freely interchange bills and laws; there is a larger number (and with greater resources) of State and city legislative bureaus from which first-hand and prompt information about local legislation may be had and which are publishing an increasing number of bibliographic helps in this field."

Mr. Wyer then asks whether the index is still needed, and, if so, whether the library can count upon definite help either with money or work from other legislative reference bureaus, or college departments of political science.

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If with money, the aid would have to take the form of an outright subsidy or a subscription to a certain number of copies.

If with work, it would have to be graduate work and to get useful results college credit would probably have to be given for it. Specifically the work would be the indexing and digesting of the session laws of one's own or other assigned states, on a uniform plan and after prescribed models.

Under date of November 4 the Federal Trade Commission issued an inquiry as to the possible coöperation of American business and professional men in the proposed development of foreign trade. This inquiry was followed by a detailed questionnaire covering various aspects of trade relations. The object of the trade commission is to obtain a broad survey of fact and opinion as a basis for subsequent legislation. The data secured through these inquiries are to be supplemented with material furnished by business concerns having wide experience in exporting and with material obtained by the commission's experts, in the United States and abroad, aided by United States consuls and commercial attachés. The chief subject of the questionnaire is whether combinations or coöperative organizations, solely for export business, among American manufacturers or producers by common selling agencies or by other means are or are not in the public interest; if such combinations are considered in the public interest the inquiry is next whether they should be open to all manufacturers in the United States or only to American-owned concerns with the right to exclude any concerns that are controlled by foreign interests, and whether they should be restricted to trade in non-competing products or cover competing products also. Inquiry is also made as to whether such export organizations would be used to restrain trade in the domestic market, and if so, how this could be prevented. Specific information is requested where the person addressed is in a position to furnish any with respect to foreign cartels, syndicates or combinations engaged in export trade or in the business of buyers, jobbers, or retailers, competitive conditions abroad affecting the export market, concessions to foreign syndicates, discrimination in banking or transportation facilites, etc. There is good reason to hope that sound and effective legislation will result from the adoption of expert opinion both theoretical and practical.

Students of corporation law will be interested in the new volume on *Voting Trusts* by H. A. Cushing (New York, The Macmillan Company,

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1915, pp. 226) in which the author discusses in successive chapters the significance of voting trusts, their contents, and the modern law regulating them. With respect to the place of the voting trust in modern business life the author holds that while it is subject to such misuse as is inevitable from the personal elements involved in it, it has not ordinarily been a means of undue concentration and has "come to be recognized both by conservative bankers and by investors as a desirable and effective adjunct of modern finance." The chapter on the law of voting trusts illustrates the divergent views of state courts upon what is public policy with regard to them.

The renewed demand that will be made upon Congress to finance the American farmer, after having financed the capitalist by the Federal Reserve Bank Act, gives a timely value to books upon the subject of rural credits. *Land Credits, a plea for the American farmer*, by Hon. D. T. Morgan, Representative in Congress from Oklahoma (New York, T. Y. Crowell Company, 1915, pp. xvi, 299) is an argument in favor of public or semi-public, non-profit sharing, farm-credit institutions, such as are available to the European farmer, as against the private profit-sharing banks proposed in the three bills which received some measure of official sanction by the 63d Congress. Unfortunately the volume is written in a pleonastic style which makes it difficult for the reader to sift out the substance of the argument presented.

There is much valuable political history in the new *History of Currency in the United States* by A. Barton Hepburn (New York, The Macmillan Company, 1915, pp. xv, 552). The work is based upon *The Contest for Sound Money* published by the author in 1903, but in view of the changes of form and the supplementary material it constitutes a new treatise covering the period from the adoption of the Constitution down to the present time. The defects of the old financial system are set forth in contrast with the reforms introduced by the Federal Reserve Act, while a concluding chapter describes the currency systems of the principle commercial nations and explains the emergency measures adopted by European nations to meet the exigencies of the war of 1914.

A monograph on *Reconstruction in Georgia, Economic, Social, Political, 1865–1872*, by C. Mildred Thompson, which appears as No. 1 of volume 64 of the Columbia *Studies in History, Economics and Public*

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Law is a welcome addition to the excellent monographs already published upon that period under the direction of Professor Dunning. The text deals in turn with the economic readjustment and reorganization in 1865–1866 brought about by the transition from slavery to freedom, with the military and political reconstruction during the years 1867–72, and lastly with the economic progress and social changes embodying the permanent effects of the new era. In conclusion the author points out that "the seven years of Georgia history from 1865–72 mark only the beginning of the social and economic transformation that has taken place since the war," while the political results of Reconstruction proved to be the least important of all in the later history of Georgia. Moreover, reconstruction meant "a wider democratization of society," opening up an opportunity to the middle class and making other kinds of wealth than lands and slaves the basis of social prestige, while at the same time the centre of sectional dominance moved from the cotton-belt to the Piedmont region. The study is characterized by a conscientious attempt to be fair in the handling of a delicate subject, and shows throughout a critical handling of a large body of source material.

Some Frontiers of To-morrow by L. W. Lyde (New York, The Macmillan Company, 1915, pp. 120, price $1.00) is an attempt to discuss, in anticipation of the close of the war, the desirable frontiers in Europe. The author's thesis is that political frontiers should be national, that is, that they should represent the sentiment and consciousness of the people within them, and this is to be judged not so much by race or by language as by common ideals based upon historic associations and economic intercourse; secondly, that where frontiers cannot be national they must be assimilative, that is, in cases where a Power has been unable to assimilate territory conquered in the past, it should not only be forbidden to annex new territory but should be obliged to release its unassimilated populations; thirdly, that frontiers should as far as possible be everywhere anti-defensive, that is, they should be identified with geographic features, such as navigable rivers, which tend to promote peaceful intercourse. The text is illustrated by three maps in which tentative new frontiers are substituted in the west, east and south of Europe for the present boundary line. It is interesting to compare the volume before us with Sir Harry Johnston's *Common Sense in Foreign Policy* which appeared in 1913, though the scope of the latter work is much wider and the political knowledge of the author more profound. It is unfortunate that Mr. Lyde should have been

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led to indulge in an abuse of Prussia which casts suspicion upon the scientific value of his statements upon other matters.

A new edition of Mary Putnam-Jacobi's *Common Sense Applied to Woman Suffrage* (New York, G. P. Putnam's Sons, 1915, pp. xiv, 236), prepared in view of the recent Constitutional Convention in New York, makes accessible one of the best volumes in the field of suffragist literature. The edition of 1894 was an enlargement of the author's address before the New York Constitutional Convention of 1894. In an introduction to the present edition by Frances Björkman attention is called to the fact that in 1894 there were less than 3,000,000 women in industry in the United States and only 360,000 in New York State, whereas in 1915 there were 8,000,000 women in industry in the whole country and 800,000 in New York State, so that the body of women who have interests apart from family life is growing greater and greater. It might be added that in the meantime the gradual extension of the police power of the State into the field of social legislation is a recognition that the working classes have interests which need special protection beyond that necessary to the community as a whole.

In a brochure of 132 pages entitled *Belgium and Germany* (Thomas Nelson & Sons, London) is contained a large number of illustrations and photographic reproduction of documents, and other texts from official sources, relating to the invasion of Belgium by the German troops, and of the manner in which war and military occupation has been conducted in that unfortunate country.

The Cry for Justice is an anthology of the literature of social protest, edited by Upton Sinclair (Philadelphia, J. C. Winston Company, 1915, pp. 891, price $2.00). As the title indicates it is a collection of the writings of philosophers, poets, novelists, and social reformers of all ages. Thomas Hood and Jack London, Richard Wagner and Olive Schreiner, Charles Kingsley and Bernard Shaw, Gilbert Chesterton and Bouck White,—men and women whose political, economic and religious ideals differ so widely are called upon to contribute with the Fathers of the early church to the general voice of protest against the suffering and injustice prevalent in the world. Naturally there must be inconsistencies when one selection is balanced against another, the common bond between them being that of protest, irrespective of the fact that the remedy in the mind of the writer may have been in the

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one case simple principles of justice and in the other the economic readjustments of socialism. Protest being the common purpose of the selections the editor has seen fit to represent even the "anarchists and the apostles of insurrection" for whose unchained furies the reader must blame not them but himself for having acquiesced in the existence of conditions which have brought these men to such a pass. There is throughout the volume a tendency to associate vice and injustice with wealth and high station, to make poverty the sole excuse for the soddenness of life in the slums, to suggest that oppression will cease when the present oppressor is overthrown, with here and there an exception as in the quotation from Emerson in which that sane thinker tells us that "the sins of our trade belong to no class, to no individual." In view of the lack of any constructive features in the book it is difficult to understand how the editor can conceive of it as "A Bible of the future, a Gospel of the new hope of the race." It is a voice of protest, and protest is not idle if it arouses indignation which may lead ultimately to reform.

Owing to the fact that the science of sociology deals with phenomena which under a specific aspect form the material of political science there are many portions of the work of the sociologist which are of direct interest to the student of political science. *Outlines of Sociology* by F. W. Blackmar and J. L. Gillin (New York, The Macmillan Company, 1915, pp. 586,) appears as one of the "Social Science Test-Books" and covers the field in a detailed and systematic manner. Part II which deals with "Social Evolution" discusses in Chapter VII the "Origin and Development of the State" and in Chapter VIII the "Theory and Function of the State," while Part IV discusses "Ideals of Government" under the general heading of "Social Ideals." Unquestionably it is of value for the political reformer to know the conclusions of the sociologist, but at the same time there is need of caution in distinguishing between the idealistic proposals of sociology (as, for example, those made on p. 429 of the present work) and the hard necessities of political expediency.

Russian Sociology, by Julius F. Hecker appears as No. 1 of volume 67 of the Columbia University *Studies in History, Economics and Public Law* and, like the volume just noticed, contains several chapters of value to the political scientist. Chapter I reviews in a useful way the social-political background of Russian sociology, while the theories of

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the Slavophils, Russophils, and the Westernists, presented in Chapters II and III throw much light upon the foreign policy and domestic politics of the country. Part III takes us into the field of Russian adaptations of Marxist sociology, Kropotkin's anarchical sociology, and the juristic theories of Korkunov. A valuable analytical table summing up the results of the study is presented near the end of the volume.

The Sociological Implications of Ricardo's Economics, by C. C. North (University of Chicago Press, pp. 65) is a doctor's dissertation consisting chiefly of an analysis of the text of the *Principles of Political Economy and Taxation*. The conclusion reached by the author is that "the essential error in classical political economy was the assumption that a science of economic activity was possible without an accounting" with the essential correlations of economics with social life as a whole. How far Ricardo was to blame for the sins of the classical school the author considers an open question.

Citizens in Industry by Charles Richmond Henderson (New York, D. Appleton and Company, 1915, pp. xix, 342) appears as one of the "Social Betterment Series," edited by Shailer Mathews and having for its general object to present the steady advance that has been made in correcting evils and establishing laws and institutions for the improvement of social conditions. Dr. Henderson's thesis is that efficiency in the employee is the employer's best asset; that better working conditions, better housing and healthier recreations are all conducive to higher efficiency; that profit sharing and "thrift measures" may act as an economic inducement to efficiency but that they do not "touch the deepest demand of the modern workingman; a share in control of the conditions of labor, of wages, of all that affects his life"—a measure of self-government in the shop and democratic control over industry. The particular bearing of the volume upon political science is that it forecasts the transition from philanthropy and welfare schemes to social legislation.

The Bureau of Foreign and Domestic Commerce of the Department of Commerce has issued in its "Special Agents Series," No. 97, a pamphlet presenting the *Commercial laws of England, Scotland, Germany and France* by Archibald J. Wolfe, commercial agent of the Department of Commerce, in collaboration with Edwin M. Borchard, law librarian of the Library of Congress (Washington, Government

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Printing Office, 1915, pp. 127, price $0.15). The object of the volume is to present to the American merchant and exporter and to the American lawyer certain practical matters of foreign commercial law and legal procedure which may be of service in the conduct of commercial affairs. The subjects dealt with are, among others,—the courts which have jurisdiction in cases of commercial litigation, lawyers, costs and fees, attachment, bankruptcy, agencies, bills and notes, contracts, and laws relating to unfair competition and trusts. An appendix contains a glossary of German and French legal terms.

The Library of Congress has issued the third volume in its series of guides to foreign laws begun in 1912. Following the publication of the *Guide to the Law and Legal Literature of Germany* and the *Bibliography of International and Continental Law*, both of which have been a welcome addition to the working library of the political scientist, there now appears a *Guide to the Law and Legal Literature of Spain*, prepared by Thomas W. Palmer, Jr., under the direction of Edwin M. Borchard, law librarian (Washington, Government Printing Office, 1915, pp. 174, price $0.50). The arrangement of material follows the plan of the volume on German law, chief stress being laid upon the civil and commercial codes. Of particular interest to the student of political science probably will be the sections dealing with jurisprudence and philosophy of law, legal history, administrative law, and labor legislation, the last-named section dealing with recent Spanish legislation on the subject of workmen's insurance and employers' liability and also industrial courts and arbitration commissions. A glossary of legal terms and a careful index complete the volume.

Among recent monographs in the *Studies in History, Economics and Public Law* published by Columbia University are two which deal with early political history in America. *The Review of American Colonial Legislation by the King in Council* by Elmer B. Russell appears as No. 2 of volume 64. After an introductory chapter devoted to a review of colonial legislation prior to 1696, the author discusses the procedure and policy of the British Government in its review of American legislation and traces the results of that review. *The Sovereign Council of New France* by Raymond DuBois Cahall, which appears as No. 1 of volume 65, covers a phase of the early constitutional history of Canada and places before the reader a scholarly account of the organization,

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procedure, functions and achievements of the Council, a body which exercised judicial, administrative, and legislative functions.

In the University of Illinois studies (volume 3, No. 4 and volume 4, No. 1) are two further monographs of interest to students of political history. *Church and State in Massachusetts*, 1691–1740, by Susan M. Reed, treats of the attempts of the Massachusetts hierarchy in 1691 to carry over into the newly created royal provincial government the theocratic ideas which had controlled the colony in its earlier days, and of the ensuing conflict between the hierarchy and the Episcopalians and other dissenters. *The Illinois Whigs before 1846*, by Charles M. Thompson, discusses the Whig party in Illinois in its national and local aspects from its origin in 1834.[1]

It might be possible, by means of a referendum, to determine whether France or Germany is nearer to the hearts of the inhabitants of Alsace-Lorraine. In default of some such test, the old controversy will continue to occupy the rival historians. Under the title *Les Affinités françaises de L'Alsace avant Louis XIV* (Paris, Recueil Sirey, 1915, pp. 158), Prof. Jacques Flach of the Collège de France has amplified his essay in the *Revue des Deux Mondes* into a small volume dealing with the historic relations between France and the much-disputed territories from the 9th to the 17th century, and emphasizing the sentimental relationship. The points of resemblance between the two civilizations are stressed,—the Gallic influence as seen in the character of the people, in the poetry of Gotfried of Strassburg, in the architecture of the Strassburg cathedral, in the controversy between Wimpheling and the Franciscan monk, Thomas Murner, over French ascendency at the beginning of the 14th century, the influx from France during the latter part of the 16th century, and many particular instances revealing a mutual understanding and sympathy. But after all is said, we come back to the point of greatest present interest, the will of the inhabitants themselves. Renan long ago pointed out that the true basis for a nation, before language or race, is the consent of the people.[2]

In his study of *La Caste Dominante Allemande* (Paris, Recueil Sirey, 1915, pp. xi, 145) Prof. Maurice Millioud of the University of Lausanne defines Pan-Germanism as a caste doctrine supported by a patriotic

[1] Contributed by J. M. Leake.
[2] Contributed by F. W. Garrison.

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interpretation of history, biology, ethnology and moral philosophy. The southern states surrendered their liberalism in a compromise with Bismarck over national unity. The rapid growth of industry called for an astute balancing of forces. Militarism, the support of the aristocracy, was made to serve capitalist ambitions; even the Socialists became a national party, fighting the capitalists at home, but joining them to check foreign competition. Warlike feelings were encouraged to distract attention from rising prices, and the popular acceptance of Pan-Germanism became a fact fraught with tremendous consequences.

The growth of the military organism in the congenial atmosphere of an inflated nationalism was followed by the inevitable dream of world conquest. It is more difficult to explain why commercial Germany was willing to hazard the shipwreck of her wonderfully successful economic expansion. A reason appears when we study that manifestation of national selfishness which we call commercial warfare. Germany's desire for colonies was stimulated by a hunger for new markets and the need of obtaining raw materials unhampered by hostile tariffs. Her foreign trade had been built up by using surplus products to undersell competitors abroad, and by the acceptance of unprecedentedly long credits, while equilibrium was maintained at home by means of tariffs, rebates, bounties, etc. It is idle to hope that natural economic laws can be circumvented indefinitely, and we are led to ask if the threatened collapse of an artificial financial structure made war necessary to forestall a colossal failure.[3]

In discussing *Le Droit de la Force et la Force du Droit* (Paris, Recueil Sirey, 1915, pp. 76), Prof. Jacques Flach of the Collège de France declares that humanity must choose between the reign of selfish and brutal force, based on pride of race, and the reign of justice, founded on the love of God and the love of man. Under the first régime the world must be made to bow to the will of the strongest race, while under the second every people would be left free to develop its national life and conscience. It is perhaps only natural that M. Flach should find the two ideals satisfactorily personified by Germany and France respectively. It is the purpose of his essay to show how German leaders of thought have found historical and philosophical justification for the worship of force, returning to the Sophist definition of justice as that which is of advantage to the strongest. With the awakening of nationality towards the end of the eighteenth century arose a con-

[3] Contributed by F. W. Garrison.

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ception of the German soul as a realization of divinity, an instrument of omnipotence, and the era of Prussification introduced historic fatalism, Darwinism applied to nations, the idea that might creates right, the end justifies the means. Then followed the scientific, cultural phase demanding the spread of German civilization, and finally the dream of a world-wide economic domain to be won by applying the theory that "economic and military forces advance side by side." We have had abundant proof that the passions engendered by war cloud the vision even of scholars and philosophers. Patriotism does not pull evenly when harnessed with a more universal emotion. In order to justify France it is necessary to sanction the use of force in a just cause, a conclusion damaging to the conception of right as a veritable power, however satisfactory it may seem to the popular mind.[4]

It is a fair comment upon our study of constitutional law that we are too apt to accept the decisions of the Supreme Court of the United States as practical issues and to neglect the theory of law according to which they are decided. Moreover, we lose sight of the individuality of the justices of the court and merge them all into a common unit. For this reason students will welcome a recent issue of the Johns Hopkins *Studies in Historical and Political Science* under the title of *The Constitutional Doctrines of Justice Harlan*, by Floyd B. Clark, Ph.D. After a brief introduction sketching the career of Justice Harlan the author discusses in turn some of the difficult questions of constitutional law upon which Justice Harlan held independent views. On the question of the suability of States the author finds in the opinions of Justice Harlan a consistent doctrine that suits against state officers are not to be construed as suits against the State where there is question of a definite act on the part of the state officer, but that they are to be so construed where the general provisions of a statute are at issue, as in the case of *Ex parte Young*. In like manner upon the question of the impairment of the obligation of contracts the author is able to trace a consistent attitude on the part of Justice Harlan in favor of the sacredness of valid contract rights. In cases involving due process of law under the fourteenth amendment Justice Harlan differed from the majority of the court in holding out against the alteration of the traditional jury system and in believing that public office should be considered as a property right. In general the author finds that the criticism that Justice Harlan emphasized too greatly the letter of the law is unfair,

[4] Contributed by F. W. Garrison.

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and that his attitude was rather to throw back upon the legislative body the duty of making laws read as they were meant to be applied. While it is sometimes difficult to follow the reasoning of the author in his attempts to find consistency in the doctrines of Justice Harlan, as, for instance, in his reconciliation of the Justice's dissenting opinion in the *Knight* case with the dissenting opinion in the *Standard Oil* case where the Justice abandons his earlier defense of the rule of reason in the interpretation of the Sherman Act, and again in his justification of the decision in *Ex parte Young*, and while we may be inclined to think that the attitude of Justice Harlan was at times rather belligerent than judicial, yet on the other hand one turns from the volume with the feeling of a more intimate acquaintance with the personality of the supreme court and with a greater sense of respect for the sincerity and legal detachment dominating the members holding that high office.

Students of international law will welcome the edition of *The Hague Conventions and Declarations of 1899 and 1907* published by the Oxford University Press (New York, 1915, pp. xxx, 303) for the Carnegie Endowment for International Peace. While there are already in the field a number of editions of those documents, notably the edition by A. Pearce Higgins (Cambridge, University Press, 1909) with its admirable commentary, there is still room for an authoritative edition at a reasonable price. The French text of the original documents bears the authentication of the Minister of Foreign Affairs at The Hague, while the English translation reproduces the official translation of the Department of State of the United States. The respective conventions are followed by tables of signatures, ratifications, adhesions and reservations, all of which have been verified from the official records. In addition to giving us the latest and most complete record of the action taken by the States in the adoption of the Hague conventions, the present edition goes beyond other editions in giving us the complete texts of the reservations made during the course of the proceedings of the Conferences and hitherto to be found only in the pages of the official *Actes et Documents*. The value of the book is likewise considerably increased by the addition of an index of persons, as well as an index-digest which will make reference to the conventions a far easier task for the layman than it has hitherto been.

Problems of Readjustment after the War (New York: D. Appleton and Company, 1915, pp. 186) is a collection of separate articles by writers who are specialists in their particular subjects. Albert B. Hart con-

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tributes a discussion on "The War and Democracy" in which he shows the extent to which popular control of the government in democratic countries has given way under stress of the war to administrative absolutism. Franklin H. Giddings writes on "The Crisis in Social Evolution" and his explanation of the struggle between different civilizations that is going on is accompanied by many suggestive observations, as, for example, whether after the war the democratic governments, while holding to their ideals of personal liberty, might not use to advantage the administrative organs which have so effectively coördinated the economic and military forces of Germany and Austria. The results would be a system "having the energetic, responsible, inventive individual as its force-generating unit, but creating organization and strengthening central control as the need arises." But perhaps the most valuable contribution to the volume is the chapter by W. W. Willoughby on "The Relation of the Individual to the State" in which the war is exhibited as a contest between divergent conceptions of the nature of the state, of its purposes, and of the relation between the state and its subjects. This relation of the individual to the state is viewed in three aspects: first, as connoting the extent to which the welfare of the citizen is bound up with that of the state, and here the author shows the transition from the proprietary conception of sovereignty prevailing in the eighteenth century to the modern conception of the responsibility of the ruler to the state; secondly, as expressing the extent to which the individual controls the form of government of the state, and here we are given an excellent statement of the meaning of constitutional guarantees of private rights and of the evils inherent in a non-popular form of government—"beneath its surface prosperity, German national life contains potentialities of evil which need only time and opportunity to be manifested;" and thirdly, as defining the sphere of governmental action, and here the author suggests one of the lessons of the war will be a recognition of the value of an efficient administrative system and in consequence a probable increase in the control entrusted to it. Other chapters in the volume are "An Economic Interpretation of the War" by E. R. A. Seligman, "The War and International Law," by George G. Wilson, "The War and International Commerce and Finance," by Emory R. Johnson, and "The Conduct of Military and Naval Warfare," by Rear-Admiral C. F. Goodrich.

A new value attaches to the 1914 issue of the *Canadian Annual Review*, edited by Mr. J. Castell Hopkins, and published by the Annual Review Company of Toronto. Long ago the *Review* attained a position

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of permanent usefulness. In the fourteen years which have elapsed since it was first published, it has become an indispensable handbook of Canadian public affairs—provincial as well as dominion—easily ranking among British publications of this class with the long-established *Annual Register*. All the older features which give the *Canadian Annual* this position re-appear in the 1914 issue; and the new value which attaches to this issue arises from the thoroughness and comprehensiveness of the history of the part that Canada is taking in the war, and of the effect of the war on political, economic, and social conditions in the Dominion. This history extends from the third of August to the end of 1914. It is written on a generous scale, with ample quotations from speeches and documents; and covers every phase of war activity in Canada from Cape Breton Island to Vancouver and Victoria. In addition to this record of Canada's part in the war—which extends to about 150 pages—there is a detailed history of the part that Newfoundland, Australia, New Zealand and South Africa had taken up to the end of the year; so that from the pages of the *Canadian Annual Review* for 1914, it is possible to follow the actions of all the oversea dominions of Great Britain in the first five months of the war.

The great war now in progress has greatly stimulated the study of the political geography of Europe. Especially welcome, therefore, is the appearance from the Oxford University Press of *An Historical Atlas of Modern Europe from 1789 to 1914*, by C. Grant Robertson and J. G. Bartholomew, which for a price slightly more than a dollar provides a cloth bound series of most excellent charts, thirty-six in number, not overburdened with unimportant names, and of sufficient size—$12\frac{1}{2}$ x 9 inches—to make easily evident the present boundaries of Europe and the historical steps by which these boundaries have been established. In addition there are maps showing orographical, ethnological, and industrial and economic conditions, together with an introductory text giving briefly the significance of the maps which follow. Overstepping the limitations of the title there are also maps of Russia in Asia, Persia, Africa, the Far East, and a world map showing colonial possessions. The press work is excellent.

Prof. James F. Colby has performed a distinct service to students of political and legal science by reprinting in a moderate sized volume, under the title *A Sketch of English Legal History*, by F. W. Maitland and F. C. Montague (New York: G. P. Putnam's Sons, 1915, pp. 229)

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the admirable articles contributed by these authors to *Social England* edited by H. D. Traill, and published in 1899. In their ensemble, these articles, supplemented as they are by occasional extracts from other sources, furnish us with a brief history which concerns not only the development of the law but of the judicial institutions of England, in this latter respect being more comprehensive than the *Short History of English Law* by Edward Jenks. To each of the chapters are appended lists of recommended readings upon the topics treated; and in several appendices matter is furnished showing the variety of forms which the English law has assumed at different times. The editor, it is believed, is justified in his statement that "this series of articles now furnishes the best available introduction to English legal history."

Prof. S. P. Orth has compiled a valuable volume of *Readings on the Relation of Government to Property and Industry* (Boston: Ginn and Company, 1915, pp. 664). This is a field where legal, political, and economic principles meet, and, unfortunately, with not a little confusion arising. The courts have sought with varying degrees of earnestness to make the law conform to new conditions, without sacrificing established constitutional principles; the legislatures have sought to establish by statute new principles governing industrial and commercial relations, and to enforce these principles through new agencies; the economists have been readjusting their theories, and the practical precepts which they declare as necessary in order to secure greater industrial efficiency and a nearer approximation to a realization of distributive justice. The entire movement is thus one of great interest as well as complexity, and we cannot therefore but welcome a volume which, like the one prepared by Professor Orth, will be of assistance to the teacher and the student alike, in arriving at a just estimate of the present phases and status of the general problem of the relation of government to property and industry. The selection of material has been made with excellent judgment.

Among the many books which have appeared dealing with the questions of international law and morality involved in the invasion of Belgium by the German armies, none is more satisfactory than *Belgium Neutral and Loyal*, by Emile Maxweiler, Director of the Solmay Institute of Sociology at Brussels (New York: G. P. Purnam's Sons, 1915, pp. 324). The work has been published in French and German, and, we are informed, the reading of it was recommended by *Vorwärts* to all Ger-

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man socialists. The work examines carefully and scientifically all the various charges which have from time to time been made of unneutral acts upon the part of Belgium, and shows, to the point of absolute demonstration, the unsubstantial basis for them. Upon the other hand he makes evident and emphasizes the fact, which deserves emphasis, that Germany, in her attempts to keep England out of the war, attempted to bargain away Belgium's liberty while as yet she had made no charge that Belgium had in any way been unfriendly to the Fatherland or acted in a manner inconsistent with her continued neutrality. Furthermore, the author naturally does not fail to comment upon the fact that, although herself asking that Belgium should not offer resistance to invasion of her soil, Germany officially praised Switzerland for announcing that she intended to oppose by force any attempt to violate her territory. "The Imperial Government," it was said, "has taken cognizance of this declaration with sincere satisfaction and is convinced that the Confederation with the support of its strong army and the indomitable will of the entire Swiss people, will repel every attempt to violate its neutrality."

THE TWELFTH ANNUAL MEETING OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION

The twelfth annual meeting of the American Political Association was held at Washington, D. C., Monday, December 27 to Friday, December 31, inclusive.

On Monday evening the attending members of the Association were the guests of the management of the Second Pan American Scientific Congress at a reception in the Pan American Building given to the delegates of the Congress and to the various learned societies in session in Washington.

On Tuesday afternoon a joint meeting was held with the American Historical Association, the American Economic Association, the American Society of International Law and Sections 6 and 9 of the Second Pan American Scientific Congress for the discussion of the preservation of the national archives. In the evening a joint meeting was held with the American Association for Labor Legislation at which the presidential address of Prof. Ernst Freund of the American Political Science Association and Prof. Henry R. Seager of the American Association for Labor Legislation were presented.

On Wednesday, December 29, the morning session was devoted to a

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discussion of Standardization and Governmental Efficiency. At this, a joint meeting with the American Statistical Association, the leading papers were presented by Roland P. Falkner, on Standardization and Statistical Presentation; J. Russell Smith, on The Meaning of Standardization and Robert Moses, on Standardization of Grades and Salaries in Civil Service. The afternoon was devoted to a discussion of Administrative Tribunals at which the following papers were presented: Judicial Determinations by Executive Departments by Charles R. Pierce and Judicial Determinations by Administrative Commissions by Charles W. Needham.

The afternoon session was a joint meeting with the American Society for International Law and the American Society for the Judicial Settlement of International Disputes. The leading papers presented were by Prof. Jesse S. Reeves, Critera of Differentiation between Justiciable and Non-Justiciable Controversies; James Brown Scott, The Nature of the Formal Agreement of Nations to Refer Justiciable Disputes to Judicial Settlement; A. de Lapradelle, A Uniform Law of Neutrality.

On Thursday the morning session was on the subject Improvement in the Technique of Direct Legislation. The program included the following papers: Mr. Judson C. King, Recent Experience with the Operation of the Initiative and Referendum; Mr. W. A. Schnader, Recent Legislation Safeguarding the Petition, and Prof. C. O. Gardner, The Problem of Percentages in Direct Government. In the afternoon two subjects were taken up for round table discussion: (1) Political Scientists and Practical Governmental Work, and (2) The Amending Procedure of the Federal Constitution.

On Friday a joint meeting with the American Historical Association was held in the morning on the subject The Growth of Nationalism in the British Empire. The leading papers on the program were: Growth of Nationalism in the British Empire by Prof. C. M. Wrong and Nationalism in the British Empire by Mr. A. Maurice Low. In the afternoon a session was held on Statute Drafting at which occurred an open discussion based on the report of the special committee on Legislative Drafting presented at the meeting of the American Bar Association held in Salt Lake City, 1915.

Due to the number of meetings of learned societies held in Washington during the period of the sessions social events were more prominent than usual. Besides the reception on Monday evening already referred to, two luncheons were arranged for members of the Associ-

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ation and their friends at the Cosmos Club on Wednesday and Thursday. On Wednesday evening a reception was tendered by the Regents and Secretary of the Smithsonian Institute and on Thursday the members of the Association were entertained at a banquet given by the Division of International Law of the Carnegie Endowment for International Peace to the members of the American Political Science Association, the American Society of International Law and the delegates to the Sub-Section on International Law of the Second Pan American Scientific Congress.

A business meeting of the Association was held on Thursday, December 30, at 9.00 a.m. The following officers were elected for the coming year.

President, Jesse Macy, Grinnell College.

First Vice-President, Charles A. Beard, Columbia University.

Second Vice-President, J. W. Garner, University of Illinois.

Third Vice-President, J. Q. Dealey, Brown University.

Secretary-Treasurer, Chester Lloyd Jones, University of Wisconsin.

Members of the Council, E. S. Corwin, Princeton University; Robt. C. Brooks, Swarthmore College; C. A. Dykstra, University of Kansas; George H. Haynes, Worcester Polytechnic Institute; Alpheus H. Snow, Washington, D. C.

SUMMARY FINANCIAL STATEMENT OF AMERICAN POLITICAL SCIENCE ASSOCIATION FOR THE YEAR ENDING DECEMBER 15, 1915

Receipts

Balance on hand (in Trust Fund 1914)	$131.52
Membership dues	3956.59
Binding *Proceedings*	3.20
Life Memberships	90.00
Publications	169.12
Reprints	
	$4350.43

Expenditures

Bills paid for 1914	$1131.11
Refunds on overpayment of dues	37.00
Clerical Assistance to Secretary-Treasurer	397.55
Postage	159.61
Williams & Wilkins for REVIEW	1905.65
Miscellaneous printing	178.30
Legislative Notes	50.00
"News and Notes"—August and November	7.00

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Typewriter	$47.50
Miscellaneous	7.44
	$3,921.16
Balance on hand	429.27
	$4,350.43

There are at present 1462 members of the Association of which 47 are life members fully paid.

ABSTRACT OF FINAL REPORT OF COMMITTEE ON INSTRUCTION IN POLITICAL SCIENCE

The Committee on Instruction appointed to investigate and report on the teaching of Government in schools and colleges presented its final report to the Political Science Association at the annual session in Washington. An outline of the contents of the report along with the important recommendations contained therein is presented herewith:

PART I

I. Stages in the advancement of civic instruction.
II. Efforts to improve the teaching of civics by such organizations as:
  (a) National Education Association.
  (b) American Historical Association.
  (c) National Municipal League.
  (d) American Political Science Association.
III. The purpose of courses of instruction in civic affairs.
IV. Methods, material, and devices.

PART II

I. Suggestive material for courses of study in
  (a) Elementary schools.
  (b) Junior high schools.
  (c) Advanced civics in senior high schools.
  (d) Select bibliographies for teachers.

PART III

I. Report of secondary school instruction by Committee of Seven and Bureau of Education.
II. Reports of state committees on the teaching of civics in separate States.
III. Preparation of teachers—normal schools, colleges, and universities.
IV. Report on the teaching of political science in colleges and universities.
V. Appendix with suggestive programs and successful methods for the teaching of civics in the public schools.

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A. *Recommendations for College Instruction*

I. Establishment of a separate department of Political Science.
II. Elementary course in American government with explanatory material and suggestive comparisons from foreign governments.
III. Special provisions for training of teachers of civics as well as for school administrators.
IV. More emphasis to be given to administrative methods and the enforcement of the law.
V. Preparation of reports and surveys on actual political conditions.
VI. Establishment of reference libraries and research laboratories for study and for the purpose of rendering aid to government officials and interested citizens.
VII. Provisions for professional training for certain branches of the public service.

B. Recommendations for Instruction in Secondary Schools

I. That a year of social science, exclusive of history, be given in the senior high school, of which at least a half year shall be civics or government, and that 4 or 5 hours per week be given to this subject.
II. That pressure be brought to bear on colleges to accept a full year of civics for entrance when the work is effectively taught.
III. Better preparation of teachers. Courses in normal schools, colleges, and universities designed to prepare teachers of government.
IV. More emphasis on local affairs.
V. Better material, collection of a civics library with reference works, government reports and pamphlet literature illustrating all phases of government work.
VI. Instruction to be made more practical. Such devices are particularly recommended as observation of local government departments, surveys of local conditions, and talks to classes by officials and others interested in governmental problems.
VII. Put civic instruction into civic practice by such devices as self government in school, by organizing classes on the model of government departments, by the formation of civic leagues and community clubs.

The suggestive outlines of courses of study which the committee has prepared are intended to offer material and methods of presentation for some incidental instruction in the elementary school and a full year course for 8th grade or the first year in junior high school, and at least a half year of government for the senior high school. The complete report with these suggestive courses will probably be published and be made available to the members of the Association and others interested.

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DECISIONS OF AMERICAN COURTS ON POINTS OF PUBLIC LAW

JOHN T. FITZPATRICK

Law Librarian, New York State Library

Aliens—Right of Employment. Truax vs. Raich. (United States, November 1, 1915. 239 U.S. 33.) A statute of Arizona which requires that employers employ only a specified percentage of alien employees is unconstitutional as denying to alien inhabitants the equal protection of the law. An alien admitted to the United States under the federal law, with which law no State has any concern, has not only the privilege of entering and abiding in the United States, but also of entering and abiding in any State, and being an inhabitant of any State entitles him, under the fourteenth amendment, to the equal protection of its laws.

Aliens—Right of Employment on Municipal Work. Heim vs. McCall. (United States, November 29, 1915. 239 U.S. 175, affirming 214 N. Y. 629. See also Crane vs. New York, 239 U.S. 195, affirming 215 N. Y. 154, 108 N.E. 427.) The provision of the labor law of the State of New York that only citizens of the United States shall be employed on public works and that preference shall be given to citizens of that State, is not unconstitutional under the privilege and immunities clause of the federal constitution or under the equal protection or due process clause of the fourteenth amendment thereto, nor is violative of the treaty of 1871 with Italy. It belongs to the State, as guardian and trustee for its people, and having control of its affairs, to prescribe the conditions upon which it will permit work to be done on its behalf, or on behalf of its municipalities.

Candidates for Office—Promise to Accept Salary in Lieu of Fees. Galpin vs. City of Chicago. (Illinois, June 24, 1915. 109 N.E. 713.) The promise of a candidate for office to accept an annual salary and to pay into the county treasury all fees, where the law provides that the officer holding the position for which he is a candidate shall receive fees, is illegal and unenforceable. The fees or salary of an officer, when fixed by law, become an incident to the office and it is contrary to public policy for candidates to attempt to attain such office by promises made to the electors to perform the duties of the office for any other or different compensation than that fixed by law.

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Citizenship—Married Women. MacKenzie vs. Hare. (United States, December 6, 1915. 239 U.S. 299.) Although under the constitution of the United States every person born in the United States is a citizen thereof, the marriage of an American woman with a foreigner is tantamount to voluntary expatriation; and the court may without exceeding its powers make it so, since such a marriage may involve international complications. Identity of husband and wife is an ancient principle of our jurisdiction, and is still retained notwithstanding much relaxation thereof; and while it has purpose, if not necessity, in domestic policy, it has greater purpose, and greater necessity in international policy.

Commission Form of Government. State vs. Thompson. (Alabama, June 30, 1915. 69 S. 461). The title of an act which purports to provide for a commission form of municipal government for certain cities contemplates the inclusion of a provision for a board of public safety, consisting of three members elective by the senate, to exercise complete and exclusive authority over the police and fire departments, to fix salaries in, and to provide for the maintenance and expenses of such departments. There is no such well defined definition of the idea and scope of a commission form of government as would exclude the addition of such a board.

Cruel and Unusual Punishments. Fry vs. Commonwealth. (Kentucky, November 11, 1915. 179 S.W. 604). The prescribing for the theft of poultry of the value of $2.00 or more of imprisonment for not less than one or more than five years is not in violation of the constitutional provision prohibiting the infliction of cruel and unusual punishment. Penal statutes are enacted in an effort to discourage the perpetration of the offenses denounced therein. The punishment that will tend to deter, in respect of one crime, must necessarily differ from that which will deter in respect of another. The legislature is the judge of the adequacy of the penalities necessary to prevent crime.

Delinquent Children—Juvenile Court Proceedings. Childress vs. State. (Tennessee, November 6, 1915. 179 S.W. 643.) Under an act providing for the disposition, care, protection, etc., of delinquent children, a child may be committed to the State reformatory notwithstanding the fact that such child has not been held to answer any charge by presentment or indictment. The provisions of the state constitution

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requiring that no person shall be put to answer any criminal charge but by presentment, indictment or impeachment, do not apply. Such proceedings before a juvenile court do not amount to a trial of the child for any criminal offense and the proceedings are entirely distinct from proceedings in courts ordained to try persons for crime. The juvenile court merely undertakes to remove the delinquent child from bad influences and to make such disposition of the child as to eradicate evil propensities by education, wholesome training, and moral instruction.

Employment Agencies—Workmen. Huntworth vs. Tanner. (Washington, November 6, 1915. 152 P. 523.) The purpose of an act which makes it unlawful for any employment agent or agency to receive from any person seeking employment any remuneration or fee, is to protect the ignorant class of manual laborers, composed largely of foreigners unfamiliar with language or conditions; and it will not be held to apply to persons seeking employment in the professions; and hence will not apply to a teachers' agency.

Employment Contract—Labor Unions. Bemis vs. State. (Oklahoma, October 9, 1915. 152 P. 456.) An act which provides a criminal penalty for an employer who prescribes as a condition upon which one may secure employment under, or remain in the service of such employer (the employment being terminable at the will of either party), that the employee shall enter into an agreement not to become or remain a member of any labor organization while so employed, infringes the right of personal liberty and property.

Game, Property in. Graves vs. Dunlap. (Washington, November 5, 1915. 152 P. 532.) The title to game, while animals ferae naturae, belongs to the State. But when animals ferae naturae are reclaimed by the art and power of man, they are the subject of a qualified right of property, defeasible if they return to their wild state. If reclaimed and kept in inclosed grounds, they are property, and as such will pass to executors and administrators and are the subject of larceny.

Hours of Labor—Constitutionality of Act. Saville vs. Corless. (Utah, July 20, 1915. 151 P. 51.) The title of an act purporting to regulate the hours of employees of mercantile establishments is not indicative of the subject matter of the act which in fact provides for the closing

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at six p.m. of all mercantile and commercial houses in cities of over 10,000 population. The act is not a valid exercise of the police power since it affects establishments conducted without employees and in such cases merely fixes a closing hour and is not directed to enterprises affecting the health, morals, safety or general welfare. The act also violates the constitutional right to enjoy, acquire and possess property, the most valuable of which is that of the right to sell.

Hours of Labor—Railroad Employees. Commonwealth vs. Boston and M. R. R. (Massachusetts, November 23, 1915. 110 N.E. 264.) An act which limits the hours of labor of employees in and about steam railroad stations such as baggage men, laborers, and crossing-tenders, infringes the guaranty of the federal constitution of freedom of contract, since it affects employees in railroad stations whose work does not concern the safety of the traveling public, the regulation of whose hours of labor is not legitimately within the police power. Nor can such an act be upheld as an amendment to the charter of the railroad corporation, the act being manifestly not intended as a charter amendment, but as a police regulation amending the labor laws.

Indian Treaties—Abrogation. Loman vs. Paullin. (Oklahoma, September 21, 1915. 152 P. 73.) It is within the power of Congress to abrogate treaties entered into between the United States and a tribe of Indians, though presumably such power will be exercised only where circumstances arise which will not only justify the government in disregarding the stipulations of the treaty, but may demand, in the interest of the country and the Indians themselves, that it should be so. In a contingency, such power may be availed of from considerations of governmental policy, particularly if consistent with perfect good faith toward the Indians.

Indictment—Necessity. Commonwealth vs. Francies. (Pennsylvania, July 3, 1915. 95 A. 527.) Indictment by a grand jury is not essential in a criminal case to due process, within the meaning of the provision of the federal constitution; hence a provision of a statute permitting a person accused of crime to enter a plea of guilty upon the indictment prior to the submission of the indictment to the grand jury, and authorizing the court to accept the plea and impose sentence, is not unconstitutional.

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Intoxicating Liquors—Anti-advertising Liquor Law. Advertiser Co. vs. State. (Alabama, June 10, 1915. 69 S. 501.) As the State has authority under its police power to regulate the sale of intoxicants, and as contracts relating to such sales are subject to such power, an act prohibiting newspapers and magazines in the State from advertising for the sale of intoxicants does not work an impairment of contracts, though the publishers already had contracts for the publication of liquor advertisements.

Legislative Committee, Life of. Fergus vs. Russel. (Illinois, November 6, 1915. 110 N.E. 130). As the functions of a legislature cease upon its adjournment sine die, all the powers which have been delegated by it, or either house thereof, to a committee, by mere resolution, also cease, as the only powers which can be conferred upon such committees are such powers as are possessed by the house or houses making the appointment. The long indulgence of a legislature and each house thereof in the custom of appointing, by joint or separate resolutions, committees to act after final adjournment, can create no right in the legislature or either house to do so. However, the legislature may, by an act regularly passed, create a commission for any proper purpose and vest it with power to perform its duties after the legislature has finally adjourned.

Monopolies—Constitutionality of Act Legalizing Farm Products Pools. Gay vs. Brent. (Kentucky, November 23, 1915. 179 S.W. 1051.) A statute declaring that it shall be lawful for any number of persons to combine or pool crops of wheat, tobacco, and other farm products raised by them for the purpose of classifying, holding, and disposing of the same, in order to obtain a higher price than they can by selling separately, is in conflict with the fourteenth amendment of the federal constitution; it not being possible when such provision is construed in connection with a provision of the State constitution forbidding combinations to enhance or depreciate values of merchandise and other statutory provisions forbidding combinations in regulation of trade, to determine with reasonable certainty when the price of an article has been enhanced above or depreciated below its real value.

Motor Vehicles—Imputed Negligence. Birmingham-Tuscaloosa Ry. and Utilities Co. vs. Carpenter. (Alabama, June 30, 1915. 69 S. 626.) A provision that the contributory negligence of a person operating a

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motor vehicle shall be imputed to every occupant thereof, but not to the passengers paying fare and riding in motor vehicles regularly used for hire, is unconstitutional as discriminating agaist persons riding in motor vehicles, and denying equal protection of the law to persons similarly situated.

Moving Pictures—Censorship. Buffalo Branch, Mutual Film Corporation vs. Breitinger. (Pennsylvania, July 3, 1915. 95 A. 433.) An act which provides for the appointment of a State board of censors with powers to regulate the operation and exhibition of moving picture films is neither violative of the bill of rights of the State constitution nor of the due process of law provision of the federal constitution.

Naturalization—White Persons. Dow vs. United States. (United States, September 14, 1915. 226 Fed. 145.) Notwithstanding the fact that in 1790, when the first naturalization law was passed authorizing the naturalization of "free white persons," the common understanding was that only people of European nativity or descent were white, and that all others were colored, and that legislators had not in definite view any persons as white except those of European nativity or descent, in view of the development of the conception of race division and in view of the legislative discussion upon and the reconsideration and reenactment of the naturalization law, the present statute must be considered to include as white persons all persons of the white or Caucasian race; hence the statute must be construed to include Syrians.

Race Discrimination—Separation of White and Negro Passengers. O'Leary v. Illinois Cent. Ry. Co. (Mississippi, October 25, 1915. 69 S. 713.) A state statute requiring separate accommodations for white and negro passengers on railroad trains applies to intrastate passengers only and has no application to a passenger riding on an interstate train.

Religious Societies—Schisms—Diversion of Church Property. Lindstrom vs. Tell. (Minnesota, November 26, 1915. 154 N.W. 969.) Where a church corporation is formed for the purpose of promoting certain defined doctrines of religious faith which are set forth in its corporate articles, the church property which it acquires is impressed with the trust to carry out that purpose, and a majority of the congregation cannot divert the church property to uses inconsistent with the

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religious tenets of the church society against the protest of a minority, however small. In the event of a schism in a church, any church property devoted to the propagation of particular doctrines remains with the organization that remains loyal to those doctrines.

Revenue Bills—House of Origin. Hubbard vs. Lowe. (United States, October 15, 1915. 226 Fed. 135.) A bill, originally passed by the United States senate, which was afterwards amended by the house of representatives by striking out everything after the enacting clause and by substituting a different act, and which was subsequently repassed by the senate, is a bill originating in the senate. Where an act as it lies engrossed in the office of the secretary of state bears a senate bill number and contains a certificate of the secretary of the senate that it originated in the senate, the courts must accept the statement of the records that the act originated in the senate, and the journal of congress cannot be resorted to. *Held*, that the Cotton Futures Act, prohibiting contracts for cotton futures, having originated in the Senate contrary to the constitutional requirement that bills for raising revenue shall originate in the house of representatives, is not a law.

Signs—Regulation by Municipal Corporation. Haskell vs. Howard. (Illinois, October 27, 1915. 109 N.E. 992.) Municipalities have power to regulate the construction and use of signs within the corporate limits. Such regulation being the exercise of the police power must be reasonable, and must not invade the personal rights or liberties of citizens. A city in anti-saloon territory has no authority to adopt an ordinance prohibiting the display of any sign or advertisement of any wholesale or retail liquor dealer upon any vehicle or building, where the ordinance is not limited to advertisements for the sale of liquor within the municipality, nor for orders for the sale and delivery of liquors in such city, and has no reasonable connection with the power to prohibit the sale of liquor.

States—Liability to Be Sued. State vs. Superior Court. (Washington, August 16, 1915. 151 P. 108.) It is well settled that an action cannot be maintained against a state without its consent, and that the state when it does so consent, can fix the place in which it may be sued, limit the causes for which the suit may be brought, and define the class of persons by whom it can be maintained. The state being sovereign, its power to control and regulate the right of suit against

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it is plenary; it may grant the right or refuse it as it chooses, and when it grants it, it may enact such condition thereto as it deems wise.

Statutes—General and Special Laws. State vs. Atchison, T. & S. F. Ry. Co. (New Mexico, July 27, 1915. 151 P. 305.) A general law is one that relates to a subject of a general nature or that affects all the people of the state, or all of a particular class. A special law is one made for individual cases, or for less than a class of persons, or subjects, requiring laws appropriate to peculiar conditions or circumstances. Statutory or constitutional provisions against special legislation do not prevent the legislature from dividing legislation into classes and applying different rules to each. The classification, however, must be based upon substantial distinctions, and not be arbitrary in its nature, and must apply to every member of the class or every subject under similar conditions, embracing all and excluding none whose conditions and circumstances render legislation necessary or appropriate to them as a class. A statute classifying counties numerically, without giving a basis for such classification or making provision for the future admission or exclusion of other counties, is special legislation.

Theatre Licenses—Revocation. Bainbridge vs. City of Minneapolis (Minnesota, November 19, 1915. 154 N.W. 964.) Where the charter of a city gives to the mayor the power to revoke theatre licenses, the power conferred is not an absolute one. It cannot be used capriciously, arbitrarily or oppressively, but only in the exercise of an honest and reasonable discretion. The exercise of the discretion of the mayor, however, cannot be subject to judicial control; the court will merely inquire whether a fair legal discretion was exercised.

Weights and Measures—Act Requiring Sale by Weight or Numerical Count. Ex parte Steube. (Ohio, December 1, 1914. 110 N.E. 250.) An act which requires certain articles therein enumerated to be sold by avoirdupois weight or numerical count, unless under agreement in writing of all contracting parties, is unconstitutional. The act places an unreasonable and burdensome obligation upon persons engaged in lawful business and is an unwarranted exercise of the police power.

Workmen's Compensation—Constitutionality of Act. Mackin vs. Detroit-Timkin Axle Co. (Michigan, June 14, 1915. 153 N.W. 49.)

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A workmen's compensation law is not unconstitutional as depriving an employee of the common-law remedy for tort, when such act provides that any employee shall be deemed to have accepted the act, if, at the time of the accident, his employer is subject to its provisions, whether the employee has notice thereof or not, provided such employee at the time of hiring does not give the employer notice in writing that he elects not to be subject to the act. There is no vested right in any common-law remedy for a tort yet to happen, and there is no coercion upon the employee, because he has free choice by giving notice to elect not to go under the act. Nor is such an act unconstitutional in so far as it exempts household servants, farm laborers, and casual employees from its provisions. The classification made is within the legislative power. Nor is the act unconstitutional in so far as it provides that payments thereunder shall not be assignable or subject to attachment or garnishment, as limiting the right of contract.

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LIST OF DOCTORAL DISSERTATIONS IN POLITICAL SCIENCE

The following list is a continuation of the series of doctoral dissertations published annually in the *Review*. For the year 1914 a list similar to that given below appeared in the August, 1914, number (vol. viii, p. 488). A date where given after the title of the dissertation indicates the probable date of completion.

COLONIES

G. W. Washburne, A.B., Ohio State, 1907; A.M. Columbia, 1913. Imperial Control over the Administration of Justice in the American Colonies. *Columbia.*

A. H. Basye, A.B. Kansas, 1904; A.M. 1906. The Office of Secretary of State for America. *Yale.*

J. S. Custer, A.B. William Jewell, 1907; B.A. Oxford, 1910. The Canadian Constitutional Act of 1791. *Wisconsin.*

CONSTITUTIONAL LAW

H. C. Beyle, A.B. Central College of Iowa, 1912. Constitutional and Administrative Aspects of Tenement House Legislation. *Chicago.*

M. S. Hirsch, A.B., College of the City of New York, 1911; A.M. Columbia, 1913. Freedom of Speech and of the Press. *Columbia.*

S. D. M. Hudson, Ph.B. Syracuse, 1907. The Power of Congress over Interstate Commerce. *Columbia.*

C. H. Meyers, A.B. Columbia, 1912. Constitutionality of Workmen's Compensation Acts. *Columbia.*

C. Wang-Shia. King and Cabinet in Great Britain. *Columbia.*

B. E. Shultz, A.B. De Pauw, 1909; A.M. Columbia, 1911. Justice McLean and the Dred Scott Decision. *Columbia.*

C. Wittke, A.B. Ohio State, 1913; A.M. Harvard, 1914. The History of Parliamentary Privilege in England. *Harvard.*

F. R. Flournoy, A.B. Washington and Lee, 1905; A.M. Columbia, 1912. The Extent of Parliamentary Control of Foreign Policy in Great Britain. *Columbia.*

Lindsay Rogers, A.B. Johns Hopkins, 1912; Ph.D., 1915. The Postal Power of Congress. Published. *Johns Hopkins.*

W. B. Hunting, A.B. Johns Hopkins, 1909. The Impairment of the Obligation of Contracts. *Johns Hopkins.*

INTERNATIONAL LAW AND DIPLOMACY

S. F. Bemis, A.B. Clark College, 1912; A.M. Harvard, 1915. History and Diplomacy of the Jay Treaty. *Harvard.*

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E. DeW. Dickinson, A.B. Carleton; A.M. Dartmouth. Equality of States. *Harvard.*

C. R. Hall, A.B. Amherst; A.M. Harvard. The Secretary of State as a Diplomat. *Harvard.*

C. E. Hill, A.B. and A.M. Michigan. The Danish Sound Dues. 1916. *Harvard.*

H. Hurtwitz, A.B. and A.M. Harvard. Change of Sovereignty in International Law. *Harvard.*

C. E. McGuire, A.B. and A.M. Harvard. The Right of Asylum in the Middle Ages. 1915. *Harvard.*

H. F. Munro, A.B. Dalhousie; A.M. Harvard. The Status of Non-sovereign Political Unities. *Harvard.*

E. M. Linton, Ph.D. Indiana, 1915. Belgian Neutrality. 1915. *Indiana.*

T. Wada, A.B. Stanford, 1912; A.M. California, 1913; Ph.D. Iowa, 1915. The Foreign Policy of the United States towards Japan, 1832–1901. Completed. *Iowa.*

H. G. Hodges, Litt.B. Princeton, 1911; A.M. Pennsylvania, 1914. The Diplomatic Relations between the United States and Great Britain, 1893–1897. 1915. *Pennsylvania.*

H. S. Quigley, A.B. Hamline, 1911; A.B. Oxford, 1914. The Immunity of Private Property at Sea in Time of War. 1916. *Wisconsin.*

C. Huth, A.B. Wisconsin, 1904, A.M. 1905. Rights and Customs of Sanctuary in Ancient Greece and Rome. *Columbia.*

W. E. Caldwell, A.B. Cornell, 1910. Development of the Ideas of War and Peace among the Ancient Greeks. *Columbia.*

F. A. Middlebush, A.B. Michigan. Diplomatic Relations between England and Holland, 1678–1688. *Michigan.*

J. V. Fuller, A.B., 1914. The Armed Neutrality. *Harvard.*

C. E. Asnis, A.B. Pennsylvania, 1904; A.M. 1913. The Development of Italy's Position in the Triple Alliance. *Pennsylvania.*

L. H. Davis, S.B: Pennsylvania, 1901, and A.M., 1912. The Doctrine of Spheres of Influence and the Open-Door Policy in China. *Pennsylvania.*

J. W. Carroll, A.B. Columbia, 1914, and A.M. 1915. The Diplomatic Situation in China. *Columbia.*

A. C. Henry, A.B. Franklin and Marshall, 1910; A.M. Pennsylvania, 1915. The Influence of the United States in the Movement for International Arbitration and Peace. *Pennsylvania.*

D. C. Orbison, Litt.B. Princeton, 1912. American Diplomatic Relations with Russia since 1824. *Pennsylvania.*

A. R. Ellingwood, A.B. Colorado College, 1910; B.C.L. Oxford, 1913. Diplomatic Relations between the United States and Great Britain during the Civil War. *Pennsylvania.*

J. B. Lockey, S. B. Peabody, 1902; A.M. Columbia, 1909. Latin America and the Monroe Doctrine. *Columbia.*

Henry Gil, Barrister University of La Plata, 1909; A.M. Pennsylvania, 1911. The Foreign Policy of the Argentine Republic on the American Continent. *Pennsylvania.*

C. W. Sutton, B. S. Washington. The Development Policy of Latin America: its Economic, Political and Social Effects and its Influence upon International Relations. *Columbia.*

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O. L. Owens, A.B. Richmond, 1898; A.M. Johns Hopkins, 1913. Early Diplomatic Relations of the United States Involving Questions of Religious Liberty. *Johns Hopkins.*

JURISPRUDENCE AND POLITICAL THEORY

C. C. Davis, S.B. and LLB. Harvard. The Nature of Law. *Harvard.*

W. Herbrouck, A.B. The Law of Unfair Combinations in England and America. 1916. *Michigan.*

J. A. Woolf, Ph.B. Chicago, 1912. Political Theory of Jeremy Bentham. *Chicago.*

E. N. Curtis, A.B. Yale, 1901; A.M. Harvard, 1904. The Influence of American Political Thought on the Second French Republic. *Columbia.*

T. Yokoyama, Ph.B. Kansas City University, 1909. The Japanese Judiciary. *Johns Hopkins.*

LEGISLATION AND ADMINISTRATION

N. H. Debel, A.B. Nebraska, 1913; A.M. 1914. The Veto Power of the Governor in Illinois. *Illinois.*

T. P. Martin, A.B. Leland Stanford; A.M. California. The Confirmation of Foreign Land Titles in the Acquired Territories of the United States. *Harvard.*

W. T. Morgan, Ph.B. Ohio; A.M. Harvard. The Personality of the Federal Judiciary. *Harvard.*

L. A. Rufener, A.B. and A.M. Kansas. The Work of the Massachusetts State Board of Conciliation and Arbitration. 1915. *Harvard.*

L. P. Rice, A.B. Wesleyan; A.M. Harvard. Taxation in Connecticut. *Harvard.*

H. B. Vanderblue, A.B. and A.M. Northwestern. Railroad Valuation. 1915. *Harvard.*

J. E. Briggs, A.B. Morningside, 1913; A.M. Iowa, 1914. Social Legislation in Iowa. Completed. *Iowa.*

P. W. Viesselman, A.M. The Disposal of State Lands in Minnesota. *Minnesota.*

C. H. Crennan, A.B. Indiana, 1913, and A.M. 1914. The American State Executive. 1915. *Pennsylvania.*

J. A. Dunaway, A.B. Park College, 1910, and A.M., 1912. The Administration of Inspection in the Various City Departments of Philadelphia. *Pennsylvania.*

U. G. Dubach, A.B. Indiana, 1908; A.M. Harvard, 1910. State Administration of Health. 1916. *Wisconsin.*

B. A. Arneson, A.B. Wisconsin, 1913, and A.M., 1914. Civil Service in the States. 1916. *Wisconsin.*

J. E. Howe, A.B. Yale, 1913. The Origin and Working of Unicameral Government in New Brunswick. *Yale.*

H. B. Vanderblue, A.B. Northwestern, 1911; A.M., 1912. Railroad Valuation. *Harvard.*

T. C. Liang, A.B. Wisconsin, 1914. United States Department of Labor. *Columbia.*

R. E. Cushman, A.B. Oberlin, 1911. Excess Condemnation. *Columbia.*

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D. O. Clark, A.B. Drury, 1890; A.M. Illinois, 1909. Stein's Principles of Administration. *Illinois.*

S. Kitasawa, A.B. Waseda, 1910; A.M. North Carolina, 1911. History and Growth of National Indebtedness in Japan. *Johns Hopkins.*

G. W. Rutherford, A.B. Missouri, 1913. The Development of Procedure in the National House of Representatives. *Illinois.*

P. H. Keyes, A.B. Barnard, 1912; A.M. Columbia, 1913. Civil Service: the Historical and Technical Development of the Merit System. *Columbia.*

R. H. Tucker, A.B. William and Mary, 1893; A.M. 1897. The Regulation of Express Services and Rates. *Wisconsin.*

J. W. Stehman, A.B. Lebanon Valley College, 1909; A.M. Pennsylvania, 1910. Government Regulation of the Securities of Public Utilities. *Harvard.*

H. Kyrk, Ph.B. Chicago, 1910. Control of Public Utilities. 1916. Chicago.

B. Glassberg, A.B. College of the City of New York, 1910; A.M. Columbia, 1914. Federal Labor Legislation of the Twentieth Century. 1917. *Columbia.*

F. E. Clark, A.B. Albion, 1912; A.M. Illinois, 1913. The Growth of Public Indebtedness, National, State and Local, in the United States since 1870. *Illinois.*

J. G. Herndon, A.B. Washington and Lee, 1911. The Wisconsin Tax Law, its Administration and Significance. *Wisconsin.*

J. L. Donaldson, A.B. Maryland Agricultural College, 1910. Present State Administration in Maryland. Completed. *Johns Hopkins.*

M. H. Lauchheimer, A.B. Johns Hopkins, 1913. Labor Legislation and Its Administration in Maryland. *Johns Hopkins.*

LOCAL GOVERNMENT

F. H. Guild, A.B. Brown, 1913; A.M. Indiana, 1915. Special Municipal Corporations. *Illinois.*

W. Anderson, A.B. Minnesota; A.M. Harvard. Municipal Contracts and Contract-letting. 1917. *Harvard.*

E. A. Cottrell, A.B. Swarthmore. The Government of Newport, R. I. 1916. *Harvard.*

G. H. McCaffrey, A.B. and A.M. Harvard. Municipal Police. 1917. *Harvard.*

R. M. Story, A.B. Monmouth; A.M. Harvard. The Office of Mayor in the United States. 1916. *Harvard.*

O. K. Patton, A.B. Iowa, 1912, and A.M. 1913. Home Rule in Iowa. Completed. *Iowa.*

W. Lamkie, Ph.B. Brown, 1905. The Organization of Municipal Employees for Mutual Benefit. *New York University.*

J. P. Selden, A. B. Olivet College, 1900; A.M. New York University, 1912. The Development of the Office of Mayor in New York City. *New York University.*

C. C. Kochenderfer, A.B. Maryville College, 1906; A.M. Olivet College, 1907. Non-partisan Municipal Elections. 1916. *Wisconsin.*

L. E. Carter, A.B. Oberlin, 1914. Public Utilities of Frankfort (Germany). *Columbia.*

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BOOK REVIEWS

The Diplomacy of the War of 1914. The Beginnings of the War. By ELLERY C. STOWELL, Assistant Professor of International Law at Columbia University. (Boston and New York: Houghton Mifflin Co. Pp. xxii, 728.)

Closely following the opening scenes of the present European struggle there began a steady bombardment by the belligerents of innocent neutrals and noncombatants by means of white, blue, orange, and other multi-colored papers. A considerable section of the American public, consisting more especially of those unfortunates who had attained into the doubtful distinction of incorporation into "Who's Who," was fairly deluged with these inspired pamphlets containing what purported to be explanations of the true motives of the various belligerents for entering the war.

Of course, a thorough investigation of the causes of this war would take us far beyond a study of these or any other official set of documents. The causes of war are in part psychological and in part social, economic, or political. They have their root in human nature—in the passions, aversions and appetites of mankind; and in the economic, social or political conditions under which men live and struggle for the means of existence and enjoyment.

The real student of the causes of war should probably begin with a study of human nature in its evolutionary and contemporary aspects and of national characteristics as manifested in the past and present. He should also study institutions and social and economic conditions by the comparative and historical methods; the development and policies of human groups in their intergroupal relations; and, finally, the documentary evidence of various kinds bearing upon the issues of peace and war. Amongst these documents, the study of diplomatic correspondence must by no means be neglected, though it is doubtful whether it should rank first.

In his history of the Hannibalic or Second Carthagenian War, Polybius distinguishes between the real or fundamental causes of the struggle and the overt acts or events leading up to that great conflict. He

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remarks that we should look for *real causes* in the "motives which suggested such action and the policy which dictated it."

For the discovery of such policies and motives for action the study of diplomatic correspondence would be particularly valuable were it not for the fact that much of this correspondence aims to conceal rather than to reveal truth. It is therefore often necessary to read between the lines—a task always difficult and sometimes hazardous.

Among the works which aim to correllate and interpret the vast mass of diplomatic correspondence immediately preceding this war, Mr. Stowell's book will always occupy an honored and important place. It is written in an honest, sincere, and impartial spirit and from a detached neutral point of view which makes its findings against the Central Teutonic Powers all the more final and effective. In this respect it contrasts favorably with such a book as Beck's *Evidence of the Case* which, however, is more readable and incisive.

The strongest portions of the book are those dealing with the analysis and interpretations of the documents themselves and in their judicious selection and arrangement.

The reviewer agrees with the author that "the piecing together of the documentary evidence under logically arranged headings will be of value to all those with an interest in internation affairs, since the perusal of the documents themselves to get at the gist of the material requires a considerable expenditure of time on the part of even an experienced diplomatist . . . . . To facilitate comparison with the original source, in each case the reference has been placed in parentheses immediately after the extract" (Preface).

The weakest part of the volume is the historic background given in the first chapter, not because of any inaccuracies or lack of knowledge displayed, but because of its inadequacy of treatment. More particularly does there seem to be a failure to appreciate the importance of the challenge to British sea power involved in the German naval program of 1900 and its execution during succeeding years. Nor does there appear to be any recognition of the importance of the effects of the Pan-Germanic propaganda, or of German dreams of exploitation in the Asiatic portions of the Ottoman Empire.

Particularly interesting and important are the author's conclusions which are contained in the last or eleventh chapter. Among the causes of the war, he emphasizes the disturbance of the balance of power involved in its effect upon the German mind of the formation of the Triple Entente, the rivalry of Austria and Russia for the maintenance

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or extension of their power in the Balkans, and the invasion of Belgium which definitely brought England into the war.

For the actual outbreak of war he blames Germany most (for risking the peace of Europe in a campaign after prestige), Austria next (for precipitating the conflict), and Russia least (for her general mobilization under great provocation at a time when there was still a possibility of mediation or negotiation). Belgium is given a clean bill of health. Especial attention should be called to the masterly defence of Earl Grey's diplomacy in the long note on pp. 354–359.

In addition to an excellent index, list of questions and answers, chronology, and list of citations, this admirable volume also contains 134 pages of valuable documents beginning with Washington's Farewell Address and ending with a letter by Dr. Dernburg in answer to Dr. Eliot.

On the whole, the book takes rank with Headlam's *History of Twelve Days* as one of the two (or possibly three) best books hitherto produced on the diplomacy of the war.

AMOS S. HERSHEY.

American Diplomacy. By CARL RUSSELL FISH, Ph.D., Professor of American History, University of Wisconsin. (New York: Henry Holt and Company. 1915. Pp. 541.)

The writer of diplomatic history is confronted at the outset with the question of method of treatment of his subject—whether it shall be wholly chronological or whether it shall be topical. The one method affords the more comprehensive survey of historical facts, the other gives a clearer comprehension of the motives and results of diplomatic action. As might be expected from one writing a book for classes in history Professor Fish has chosen to employ the strictly chronological method of treating American diplomacy. The advantage of this treatment is offset by the disconnected and necessarily meager account accorded to many of the most important diplomatic questions.

The chronological method imposes a great burden upon the reader in requiring him to carry a number of incomplete topics through half a dozen chapters with merely a paragraph in each chapter concerning a given topic. It is not conducive to a clear understanding of the Newfoundland fisheries dispute for example to be obliged to follow the diplomacy connected therewith through pages so scattered as the following, 1, 2, 43, 45, 48, 182, 183, 192, 193, 285, 346, 348, 352, 375,

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376, 387, 432, 434, 435. Following the chronological treatment the author is forced to include decades barren of any important diplomatic history when the only captions he can find for his chapters are such as these: "Routine" "Baiting the Lion," and "Reciprocity, Claims, Boundaries and Slave Trade." Professor Fish has succeeded in giving a suprisingly complete enumeration of diplomatic events in American history, but the inclusion of many minor episodes prevents an adequate treatment of many of the more important affairs. It seems unfortunate that a volume in American diplomacy should be unable to devote more than a paragraph of twelve lines to such an important diplomatic events as the two Hague Conventions.

The author has made wide use of authoritative sources. In his chapter on "Pre-Revolutionary Boundaries" and elsewhere in the book Professor Fish has used material obtained from his researches in the Italian archives. Excellent judgment is shown in the selection of the best secondary sources as well as a breadth of knowledge of primary sources. The references are exceedingly well chosen, although here again the chronological treatment with accompanying references makes it more difficult to find all the authorities upon a given subject. The most important authority on the Newfoundland fisheries dispute is lacking—*Proceedings of the North Atlantic Coast Fisheries;* 61st Cong., 3d sess., S. Doc. 870, Vols. 1-xii. In connection with the account of the Hague Conferences no reference is made to the important work of J. B. Scott—*The Hague Peace Conferences.*

The book is unusually free from errors and those that exist are of slight importance. Monroe's principal instructions to the American peace commissioners were issued January 28 instead of January 14 (p. 182). The offer to the American government of direct negotiations was made by Castlereagh November 4, 1813, rather than July 13 (p. 179). In assigning the reason why the American commissioners at Ghent consented to the omission of any statement upon impressment in the treaty the author is hardly justified in implying that the instructions from the home government had changed because of the burning of Washington, the influence of the proposed Hartford Convention and the attack on New Orleans, all of these things having occurred after the concession was made by the American commissioners. In a note to the commissioners as early as June 27 Monroe had suggested the omission of impressment. The change of the American government was due mainly to the fact that the European conflict had at this time come to an end and the actual practice of impressment had ceased. The

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typographical errors observed are few; "Shawanee" for Shawnee (p. 65) and "big" for brig (p. 228).

Professor Fish writes in a style distinguished by its strength and aptness of expression. He is very successful in stimulating the imagination by a mere historical illusion. His descriptions of men are clear-cut and illuminating.

The book brings American diplomacy down to very recent history. It contains chapters on the Mexican situation and on the European war. The author takes an optimistic view of the success of American diplomacy in general and attributes it not only to the directness of method and honesty of purpose, but also to the large degree of continuity of service that has prevailed in the department of state at Washington.

The intrinsic merit of the book and the present day interest in international affairs justify the hope of the author that his work will be supplemented by the intensive works to which reference has been made "and that it may serve to broaden the basis of public opinion upon which the usefulness and ultimate safety of the United States must depend."

F. A. UPDYKE.

Electoral Reform in England and Wales. The Development and Operation of the Parliamentary Franchise, 1832–1885. By CHARLES SEYMOUR, M.A., Ph.D. (New Haven: Yale University Press. 1915. Pp. xix, 564.)

The aim of Mr. Seymour's book is to depict how far England, in regard to its electoral franchises and its electoral system in general, traveled towards democracy between 1832 and 1885—how the house of commons, which was controlled by the aristocratic and wealthy classes until as late as 1867, was, as the result of the extensions of the franchise in 1832, 1867 and 1884, replaced in the last two decades of the nineteenth century by a house of commons in the election of which the occupying householder is easily and indisputably the dominating element. The undertaking entailed an enormous amount of work on Mr. Seymour's part—much more work than is at first obvious from a book the text of which does not extend to quite 550 pages. It was a task demanding much research in the Hansards, in the parliamentary papers from 1832 to 1906, in the records of those courts which have cognizance of registration cases, and also in political biography of the nineteenth century.

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Mr. Seymour's success with his task is so pronounced that it is easy to give at least four reasons why *Electoral Reform in England and Wales* must at once take front rank among histories of England in the nineteenth century, and in particular among histories of parliament and of parliamentary franchises. The first reason is that of the six or seven books on the electoral system, or rather on the reforms of the electoral system of 1832–84, Mr. Seymour's book is the only one that covers the acts of 1832, 1867 and 1884. It is, moreover, the only book in which there is a description of the old franchises on which the unreformed house of commons was elected, and a detailed history of the electoral changes—extensions of the franchise and redistribution of seats—which followed from the reform acts of 1832, 1867 and 1884–85. Before Mr. Seymour published this long-needed book there were excellent histories of the reform act of 1832. Veitch had published in 1913 his interesting and adequate history of the long agitation for the first reform of the electoral system—an agitation which had its beginnings as far back as the American Revolution; and in 1914 Butler published his history of the fortunes of the reform bills of 1831–32 in the Althorp-Durham committee, in the Grey cabinet, in the house of commons, and in the house of lords. Cox's history of the reform bills of 1866 and 1867 was for many years of considerable service; but until Mr. Seymour undertook his work there was no adequate history of the extension of the franchise in 1884—an extension which increased the electors in county divisions from 900,000 to 2,500,000—or of the sweeping changes in 1885 in the distribution of seats in the house of commons. The history of the numerous franchise bills, and of the redistributions in 1832, 1867 and 1885, is traced in detail, all of it of much interest, by Mr. Seymour, who also in these sections of his book analyzes the effect of the several reforms and redistributions on the political power of the aristocratic and agricultural interests and on that of the industrial and commercial interests, as well as the influence of these reforms on the electoral fortunes of the two great political parties.

A second reason why Mr. Seymour's book is of permanent value is the extreme care which he has bestowed on the history of registration. A third reason is that there is in no other book anything approximating to the history of the elimination of corruption in many boroughs that is to be found in those chapters in Mr. Seymour's book in which he traces with much clearness the influence of the several extensions of the franchise, the disfranchisement of the smaller boroughs, the ballot act, and the enactments after 1832 for the suppression of bribery and intimida-

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tion, or the morality of parliamentary candidates and electors. Bribery and intimidation notoriously survived both the reform act of 1832 and that of 1867, solely because there were so many men of wealth eager for election to the house of commons. The substitution of the ballot for open voting did not at once make an end to these evils. They were centuries old, and ingrained in most of the old boroughs when secret voting was established by the act of 1872. It took time and other forces in addition to enactments to uproot bribery in these boroughs, and especially in the freeman boroughs, which were notorious for electoral squalor. But the drastic and comprehensive corrupt practices act of 1883—the measure that is always associated with the name of the late Lord James of Hereford—worked a greater change for the better than the scores of treating and bribery laws enacted between the Revolution of 1688 and 1883. Moreover, in the elections that came after the extension of the franchise in 1884 there were other forces at work—forces originating among the electors themselves—that created a public opinion in support of the act that James, as attorney-general in Gladstone's administration of 1880–85 had carried through Parliament in 1883. Mr. Seymour does not claim for the existing law—the law of 1883—that it has completely eradicated bribery. Few Englishmen—proud as they undoubtedly are of present-day election morality—would advance such a claim. But as an American student of English franchise laws and of election procedure and usage Mr. Seymour notes with satisfaction that bribery, which was always a characteristic of borough as distinct from county elections, has become so infrequent that it has not been successfully put forward as a reason for unseating a member on petition since the James act went into effect.

Mr. Seymour's aim throughout his book is to show to what extent this reform of the franchise or that redistribution of seats, this amendment of the registration laws or that law directed against electoral corruption, carried England forward towards democracy; and in his final survey of the working of the act of 1883 he insists—and rightly—that it stands as a landmark in the development of democracy in England, and must be classed with the act for the extension of the franchise in 1884, and the redistribution of seats act of 1885.

English as well as American students of the electoral system of England are under indebtedness to Mr. Seymour for the thoroughness of his work in these two sections of his book—the chapters devoted to registration laws and registration courts, and the chapters in which he

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traces the changes for the better in election morality which took place between 1832 and the end of the nineteenth century. This indebtedness arises out of the fact that both the evolution of the registration system between 1832 and 1885, and the various forces that in the second half of the nineteenth century brought about the elimination of corruption from the boroughs, have been entirely neglected by writers of general political histories, and have hitherto received no careful or detailed attention from writers who have specialized on particular aspects of the electoral history of England since the reform act of 1832. Electoral squalor such as survived in scores of the older English parliamentary boroughs until as late as the election of 1880, and such as is described in some of Mr. Seymour's pages, could never be a congenial subject to handle. But it engaged the attention of many Grenville committees; of judges who in 1868 took over the work of the long-established Grenville committees; of special commissions of which judges of the court of queen's bench were members; and also of many parliamentary committees; and no history of the representative system, or even of social England, can be complete in which this electoral squalor is ignored. Both political parties were responsible for it. It was far on in the nineteenth century before members of parliament and parliamentary candidates of the whig and tory parties regarded bribery as other than venial; and almost invariably it was the radicals, who, as upholders of democracy, led the way in demanding that there should be a weeding out of the widespread corruption in the older boroughs that the reformed house of commons had inherited in 1832—and inherited without much protest—from the unreformed house of commons.

A fourth reason for the place that Mr. Seymour's book will take among books concerned with England in the nineteenth century is that it is well and clearly written. Hansards and parliamentary papers, as was inevitable, have been largely drawn upon; but Mr. Seymour has a happy faculty of summarizing; and nowhere is the book overburdened with long extracts either from speeches in parliament or from reports of parliamentary committees. The appendices—ten pages in all—are statistical or concerned with the details of the distribution of electoral power between counties and boroughs, as this distribution was affected by the acts of 1832, 1867, and 1885.

E. P.

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Maryland Constitutional Law. By ALFRED S. NILES. (Baltimore: Hepbron and Haydon. 1915. Pp. 588.)

This work deserves notice not only because it is well done, but because it is a study in a much neglected field of American constitutional jurisprudence. The author, who is a lecturer in the University of Maryland Law School, has prepared the volume for the use of his students, but that it will be found of value to lawyers and to students of American constitutional law there can be no question. The arrangement adopted has been that of taking up *seriatum* the clauses of the constitution and commenting upon them in the light of the judicial and legislative interpretation which they have received. This mode of presentation has been selected, the author tells us, not because it is the logical one, but because his own experience as a teacher has led him to believe that thus the constitution is better fixed in the mind of the ordinary student. "Such an arrangement visualizes the document, while a philosophical treatment is apt to lead to vagueness and uncertainty." With this statement the reviewer is inclined to agree where the attempt is not made to advance further into the subject than is possible in the time that can reasonably be given to it in the curriculum of the ordinary law school. An additional feature, admirable from the pedagogical standpoint, is the brief presentation at the close of each chapter of a considerable number of illustrative cases, the statements to which they apply being indicated by asterisks in the text. The book contains a table of cases, and an appendix in which are given the texts of the various constitutions and amendments thereto, under which Maryland has lived. It is to be hoped that this book will serve as an example for similar works dealing with the public law of other States of the Union.

W. W. W.

Law and its Administration. By HARLAN F. STONE. (New York: Columbia University Press. 1915. Pp. 232.)

This volume, composed of lectures delivered upon the Hewitt foundation at Columbia University, by the Dean of the Law School, furnishes to the layman an admirable introduction to the study of law and its administration in the United States. The style is untechnical, and the mode of presentation simple and clear. The nature and functions of law, the relation of law and morality, and fundamental legal conceptions provide the topics for the first four chapters, the remaining four being

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devoted to procedure, bench and bar, and law reform. While pointing out various evils in present legal conditions in the United States, Dean Stone would be described as a moderate reformer. To a not inconsiderable extent he ascribes the unsatisfactory conditions which he finds to the character of training for the bar which prevails in this country. "The impartial student of our legal system is compelled reluctantly to admit that, taking into account the entire history of the American bar, there has been a deterioration in our bar both in its personnel, its corporate mode, and, consequently, in the public influence wielded by it" (p. 165). "The result of the methods of admission to the bar which have generally obtained throughout the United States is that they have set a low standard of character and attainment for the entire bar." Dean Stone is not disposed to grant that justice should be administered from the bench in accordance with the conceptions of social justice which the judges may happen to entertain. This is a legislative rather than a judicial criterion:—the distinction between legislation and adjudication being effectively stated. The view is expressed that the use of injunctions has been but seldom abused, and that at the present time there are few States where persons charged with crime escape conviction because of technicalities of procedure. The unsatisfactory condition of civil procedure in New York under the present code is, however, emphasized, as contrasted with the working of the short practice act of Massachusetts supplemented by rules of court; and the recently adopted practice act of New Jersey is commended as an ideal form of procedure. The objections to the "recall of decisions" is so succinctly stated as to deserve quotation. "All that would be ascertained by any given recall would be that the statute determined by the court to be unconstitutional was by the recall determined to be constitutional. Whether constitutional in whole or in part, what reason should be assigned for the recall, what judicial principle established, or whether the principle should be extended to other classes of cases, are questions which must remain unanswered by the recall. In other words, it is an attempt to establish a constitutional rule for judicial guidance by popular vote, without announcing what the rule is either in form or substance. We thus amend out constitution without indicating the scope of the amendment and leave it to the courts and legislature to guess what class of legislative acts may be lawfully enacted."

W. W. W.

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Nationalism and War in the Near East. By a Diplomatist. Edited by LORD COURTNEY OF PENWITH. Carnegie Endowment for International Peace. (Oxford: Clarendon Press. 1915. Pp. xxvi, 428.)

If the author's personal identity is not disclosed, his exceptional competency to deal with the subject is evident—his first hand familiarity with Balkan geography and racial characteristics, intimate knowledge of local and European diplomacy, well grounded historical perspective, a detached, impartial point of view, and a vigorous, sometimes colloquially expressive, style which compels attention. No other recent book on the Near East approaches this in serious import.

Written before the outbreak of the present European war, except for a few added footnotes and the preface, the author's reflections upon the situation left by the Balkan wars are of especial interest in view of the event. Of what has turned out to be the three-fold relation of that situation to the present war, the fundamental importance of the accession of influence to Russia and the Triple Agreement and the blocking of the Teuton advance to the East, is pointed out with the comment "It has already been shown that the Slav power may well think that the time has come to meet the economic expansion of German nationalism in the Near East by war; and it is now suggested that the Tutonic Powers may also think that the time has come to reopen by war the outlet to the Near East that war has just closed;" the Serbo-Croatian situation, which furnished the spark, is alluded to, but lies outside the author's survey; while the Macedonian question, which is of course the real cause of Bulgarian intervention and thus has again focussed public interest on the Balkans, is the central subject of the book. As the result of the failure to reach an equitable settlement of this question, the author foresaw the likelihood of a Bulgarian offensive alliance with Austria or Turkey (p. 354), and peril to Serbia and Greece. The first Balkan war, or the "War of Coalition," was a "perfectly normal development of the nationalistic movement," the "last chapter" (but?) "in the volume which is that of the nationality movement of the eighteenth and nineteenth centuries—the history of the epoch of national democracy" (p. 32). But the second the "War of Partition," was nursed by the uncompromising demands of the military parties, was precipitated by a Bulgarian military order unauthorized by the premier, and the peace was dictated by purely military considerations, including the, to the author, false doctrine of "balance of power." "The result has

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been an excellent example of the danger of basing such calculations upon purely material considerations such as territory and population, and ignoring moral forces such as national consciousness and international comity" (p. 354).

The relations to the causes and events of the present war will perhaps be the chief interest of the many readers at the present moment. But the book is rich in general reflections upon war, its causes justifiable or unjustifiable, its effects good or bad, upon tendencies democratic or imperialistic, upon the superiority in ultimate vision of "democratic diplomacy" over "Realpolitik," etc. Whether or not one agrees with the conclusions, they are thoughtful and strikingly stated. The indisputable value of the book lies in the penetrating analysis of the specific conditions of "nationalism and war in the Near East." Everyone who has ever lived for any length of time in one of the Balkan lands has felt, in an almost physical sense, the overpowering dominance of nationalistic sentiment raised to the nth power. The author shows in detail that nationalism is the one vital factor, absorbing all others, so that, for example, the church is no constructive moral force, but only an agency of nationalism. "Balkan nationalism is still in active eruption—it is hot enough and fluid enough to penetrate any crack and ignite any combustible."

CARL D. BUCK.

Economic Origins of Jeffersonian Democracy. By CHARLES A. BEARD. (New York: The Macmillan Company. 1915. Pp. ix, 474.)

This volume, which, the author promises, will be shortly followed by another on "Agrarianism and Slavocracy," is the second of Professor Beard's notable contributions to the fulfilment of the prophecy quoted by him in the preface, that "American history will shortly be rewritten along economic lines."

Professor Beard, taking issue with the conclusions of Professors Basset and Libby, that the period of Washington's administration was a "purely transitional era," marked by no great and definite political cleavages, finds therein the same great conflict between the rugged debtor yeomanry and the creditor "fiscal view," between agrarianism and fluid capital, that dominated the campaign for the ratification of the Constitution, and traces it down, translated by the current political nomenclature and circumstance, into Federalism versus Republicanism, and, later, into Federalism and Jeffersonian Democracy.

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Jeffersonian Democracy at best, according to the author, "meant simply the possession of the federal government by the agrarian masses led by an aristocracy of slave-owning planters and the theoretical repudiation of the right to use the government for the benefit of any capitalistic groups, fiscal banking or manufacturing." Professor Beard by no means shares the naive faith of a distinguished Senator from Mississippi and others in Jefferson's passionate "cherishment of the people" as the basic principle of Jefferson's political creed. While, of course, on the platform and in the press, Jefferson was the incarnation of an abiding belief in the virtue of the soil and an abhorrence of the "arts and artifices of commerce, finance and manufactures," any explanation in these terms of his Democratic partisanship appears to the author as superficial as did the "inspiration theory" of the Constitution. No clash of foreign or indigenous philosophical preconceptions or political and social ideals, but agrarianism versus fluid capital is the author's simple key to the "Great Battle of 1800." "There is no doubt," he says, "that Jefferson believed the landed interest to be the economic foundation of the Republican party. This would be inferred, of course, from his general notion that agriculture was the only enduring basis of republican government, but on more than one occasion, he referred to that interest as the object of his solicitude in politics and the chief support of the Republican party." But Professor Beard finds that Jefferson could always on occasion bury his dislike of the "paper feudal system," the "Anglican monarchical aristocratical party." "Jefferson was what Hamilton declared him to be, a theorist who never allowed his dogmas to interfere with the pressing exigencies of practical affairs. But when all is said and done, it yet remains true that, within the limits of stern realities, Jefferson was agrarian in his principles and practices."

Naturally, the portion of this volume bearing most directly upon the thesis of that school of American historians with which Professor Beard's name is invariably associated, is that containing data on security-holdings by public officers or great local groups laboriously gathered by the author from the Treasury books at Washington, as for instance, in his analysis of the vote on the Assumption and Funding Bills. One may venture to suggest that some of this important material is rather concealed by too much foundation and explanation. The relevancy of Chapter XI on The Political Economy of John Adams is not always apparent.

Without in any way committing one self to the main economic hy-

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pothesis of the work, the value of the radical and healthy stimulus to American historical research afforded by this second phase in Professor Beard's American trilogy of economic determinism cannot be overstated. It is to be hoped that the trilogy will be extended to a cycle, the epilogue of which will be set in our own day.

FRANK I. SCHECHTER.

Socialized Germany. By FREDERIC C. HOWE, LL.D. (New York: Charles Scribner's Sons. 1915. Pp. x, 342.)

The purpose of this work is, *first*, to explain the foundations of efficiency, the bases of the extraordinary material strength, which the European conflict has revealed Germany as possessing; *second* and chiefly, to suggest "a new kind of social statesmanship which our own as well as other countries must take into consideration if they are to be prepared to meet the Germany which, in victory or defeat, emerges from the war." It is the system of state socialism, described in this volume, which "has largely made Germany what she is, a menace or a model, a problem to statesmen of other countries, and a pathfinder in social reform." It is the firm conviction of the author that "Germany is more intelligently organized than the rest of the world. The individual German receives more from society. He is better protected in his daily life. The gains of civilization are more widely distributed than they are with us."

State socialism in Germany is not, in the opinion of the author, entirely a product of modern influences and conditions. Much of it springs from the feudal elements which are still vital and effective in German society. The landed feudal aristocracy, the Junker class, is the dominating political force both in Prussia and the Empire. It is absolutistic, militaristic and imperialistic. It has always believed in a strong state and in broad state powers. The liberal, individualistic and *laissez faire* economic and political ideas of early nineteenth century England have never found lodgment in German philosophy. To this feudal viewpoint no opposition is raised by other classes. Monarchical or state socialism is the most natural thing in the world to Germans generally. "There have never been any presumptions in Germany against the state. From earliest times the great landed estates and forests have been owned and operated as part of the fiscal system. The lives and property of the individuals have been regulated with inquisitorial officialism. The state has been supreme in the eyes of all classes."

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The comparative recency of the industrial revolution in Germany has permitted these feudal traditions to persist; feudal psychology has been merely adjusted to modern conditions. The state expanded its activity and its control over the new fields of modern industrialism, when these developed, as a matter of course. Moreover the highly efficient permanent civil service of Germany lends itself to such enlarged state functions, as the more democratic and corrupt administrative services, with which Americans at least are familiar, do not.

The policy of state socialism is a product of the German conception of the state, to which the author contributes one very interesting chapter. In his opinion this has no counterpart in ancient or modern times. The Roman Empire in the height of its power is the only state with which Germany can be compared. The state's activities are all a part of the German conception of *Kultur* which "includes state socialism, social legislation, the conservation of human life, and the promotion of the well-being of the people. All of the individual and collective contributions which Germany has made to the world form part of *Kultur* as the German understands the word." Unity is the predominant note in Germany. The nation thinks and acts as a great human mechanism. No group has been permitted to sacrifice the state to its exclusive control. Each class is ready to make the sacrifices, to accept the limitations on its privileges, necessary to national welfare. This process of socialization has been greatly promoted by the European war, and after the war there will doubtless be a great increase of state activity. Individual initiative and aggressive attack on the problems of industry, commerce and social intercourse are the products of this régime. A desire for service, exemplified by the eagerness to accept unpaid positions on city councils and committees, is a conspicuous feature of German public life. This high efficiency and potency of national life is secured, to be sure, at a certain cost. The most serious price is the caste system which runs through every fiber of the state. Unchallenged by the majority of the people who assume that an individual is born to his place in society, and that only in exceptional cases may he hope to rise from it, this vests the ultimate control of government in the hands of the old privileged classes. Caste prevails in social intercourse; it rules education. This is not, however, so the author thinks, a necessary part of state socialism. Thoroughly lacking in the democratic idea as the German state is, he believes that "the institutions that Germany has developed, and the efficiency that has been achieved are in no way inconsistent with democracy."

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A considerable mass of valuable information has been accumulated on the various phases of imperial, state and municipal social activity. Not only is a full account given of the various state owned and operated industries, but the elaborate system of state regulation and control of private industry and social life is fully treated.

Unfortunately there are a number of errors and inaccuracies which mar in considerable degree the general excellence of the work. In treating of the constitutional organization of the government there is a tendency to general statements which will scarcely bear analysis. Thus the statement (p. 13) that "the constitution [of Prussia] was merely a recasting in legal form of the old feudal order," will not approve itself to students of German constitutional history and law. Nor is it scarcely correct to say (p. 13): "The King became the Kaiser, and along with the Bundesrat, or Senate, the final repository of authority." The Parliament Act by which the veto of the House of Lords in England was abolished is referred to (p. 14) as dating from 1910, instead of 1911. The number of Prussian votes in the Bundesrat is given (p. 28) as 20 out of 58 votes, "her quota having been increased from 17 by contracts made with smaller states subsequent to 1871." This was true some years ago, but Prussia no longer controls the two votes of Brunswick, while three delegates have now been admitted from Alsace-Lorraine, making the total number 61, and these three votes are presumably under Prussian influence. Hence the number of Prussian votes is either 18 or 21, but in no case 20, and the total number is 61, not 58. Greater Berlin is stated (p. 30) as sending eight members to the Reichstag; the number should be six. It is asserted (p. 31) that the members of the Reichstag are not paid. This was formerly true, but since 1906 they have received 3000 marks a year. The description (p. 40) of the three-class electoral system in Prussia is incorrect, in stating that "those who paid one-third of the taxes are permitted to choose electors *who in turn elect one-third of the deputies to parliament.*" In fact the three classes choose each one-third of the electors who all together in one electoral college by absolute majority choose the one, two or three members of the Reichstag to which the constituency is entitled. The number of members in the Prussian lower house from Berlin is given (p. 42) as nine, whereas it has been twelve since 1906. One wonders at the definiteness of the statement (p. 45) that the long struggle over dues and taxation by which the English constitution was evolved "ended in the subordination of the Crown to Parliament, which up to 1909 was, in effect, subordination

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to the landed aristocracy." What radical change occurred in 1909 that warrants so positive a statement? The name of President Pritchett of the Carnegie Foundation is spelled (p. 217) "Pritchell;" that of Baron vom Stein is given (p. 267) as "Baron von Stein." The description of the three-class electoral system for Prussian cities (pp. 269, 270) is correct for the period before 1900. Quite a different system, though still a three-class system, is now employed. The amount of tax paid by each class is no longer equal. In 1900, for example, in Berlin, Class I paid a tax of 25,322,699 marks; Class II paid 25,325,199 marks; while Class III paid only 11,096,743 marks.

WALTER JAMES SHEPARD.

Government and Politics of the German Empire. By FRITZ-KONRAD KRÜGER. (Yonkers-on-Hudson: New York. World Book Company. 1915. Pp. xi, 340.)

This little book is the first to appear of a series, entitled "Handbooks of Modern Government," under the editorship of Dean David P. Barrows and Prof. Thomas H. Reed of the University of California. Other volumes will deal with "American Dependencies," "The Government of the Swiss Confederation," "Government and Politics of Great Britain," and "Government and Administration of Prussia and the Federal States of the German Empire." The volume under review sets a high standard of excellence which, if maintained by its successors, will make the series one of the most useful and notable contributions in recent years to the field of government. More than the usual attention has been devoted by the publishers to the make-up of this handbook. In attractiveness of design it leaves little to be desired. It is adorned by handsome illustrations of the three kaisers and the five chancellors, and contains also two very interesting and useful charts, one of the Reichstag hall showing the seating of the different parties; the other a map of Germany showing in colors the distribution of the members of the Reichstag according to party.

The author of the present work holds the doctorate from Tübingen and likewise a degree from the University of Nebraska. He thus combines the intimate and detailed knowledge of the German scholar with the appreciation of the needs and requirements of the American student. There is evidence throughout the pages of the work of both these qualities.

Since one of the forthcoming volumes is to treat of the government

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and administration of Prussia and the other member-states of the federation, this volume is confined to the imperial government alone. For this, however, the treatment is well-proportioned and very satisfactory. The information is thoroughly up-to-date, a complete mastery of the sources being at all times evident. There is a chapter on "The Physical Basis of the German Empire," one on "The Foundation of the German Empire," one on "The Development of the Constitution." Then follow chapters on the nature of the Empire and its several organs of government and the various branches of the administration. There are chapters on the government of Alsace-Lorraine, the parliamentary history of Germany, on Germany's foreign policy and on the colonial dependencies. Not the least valuable feature of the work is the critical bibliography, which occupies 33 pages and is classified under fourteen heads. There is also a tabular outline of the government of the states of the German Empire which will doubtless prove useful. Selected bibliographies are appended to each chapter, and footnotes are used, not in abundance, but where required.

The intention of the editors of the series is stated as being not "to limit authors in the expression of their opinions, provided that views are expressed with courtesy and moderation." The author of the present work is in "general sympathy with the principles of the National Liberal party of Germany;" he is clearly in entire accord with German national policy and viewpoint. This cannot be said to bias his judgment, for he retains throughout the work the scholarly and scientific attitude. While some of his opinions, especially on foreign policy, will not be accepted by a majority of American students, they are not formulated in a manner to give offense. An example of the author's mode of treatment of foreign affairs is found in the statement: "Indeed a dangerous cloud on the political horizon of Europe disappeared with the settlement of the Morocco question. Unfortunately the calculation of many German diplomats that France would from now on be satisfied with the conquest of her enormous African Empire and forget the loss of Alsace-Lorraine proved wrong. The middle of the year 1913 witnessed again a *revanche* excitement in France similar to the chauvinism of the eighties, and warned the German people to continue their watch on the Rhine." It is interesting to observe that the author opposes himself to "the opinion of the majority of scholars in the United States," in respect to the question of the establishment of ministerial responsibility in Germany. Apparently he believes that the German government is in a condition of stable equilibrium and that evolution

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toward the ministerial or parliamentary type of government is not to be expected. His judgment on some of the works cited in his bibliography will doubtless be questioned. Thus he describes Seignobos' "A Political History of Europe since 1814" as "a book against which we must warn." "It contains," he declares, "very bad mistakes, and it is impossible that the author has really investigated his German sources, to which he refers." A number of misspelled names have been noticed among his bibliographical citations. But in spite of any minor defects the work is to be welcomed as affording the most recent and reliable information on the government of Germany. It will doubtless find wide use as a text-book in courses in universities on European governments, and should also prove of great service to the general reader.

WALTER JAMES SHEPARD.

The Diplomatic Protection of Citizens Abroad or the Law of International Claims. By EDWIN M. BORCHARD. (New York: The Banks Law Publishing Company. 1915. Pp. xxxvii, 988.)

There should be no hesitancy in acknowledging at the outset that Dr. Borchard in this scholarly, comprehensive work has made a most important contribution to the knowledge of international law as practically applied. He has mined thoroughly in a vast field of facts and precedents, particularly in the decisions and acts of the Department of State. Having evident freedom of access to its archives, Dr. Borchard has made himself a trustworthy authority on the theory and practice of the United States concerning the international rights and obligations of aliens. There is every evidence throughout the book that the author has consulted and profoundly studied a wide range of authorities and sources.

The method employed by Dr. Borchard in treating this great subject is open to criticism. The monumental work of John Bassett Moore though entitled an *International Law Digest* does not pretend to do much more than present in well edited form an enormous number of valuable precedents and opinions. This material can hardly be said to be presented in completely *digested* form. Dr. Borchard, on the other hand, while not calling his book a "digest," does actually attempt to formulate, to deduce, and to apply general principles and specific rules of international law. His method is somewhat confusing. He

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starts out by trying rather laboriously to elaborate a philosophy of the rights of aliens to protection and never abandons his quest. The question keeps reappearing in the discussion of various specific instances. One has the feeling that the author really has not completely solved the problem. In one place (pages 11 to 15), he emphasizes the "rights of humanity" as at least one source of the claim to protection. In another place (p. 353), he states that: "It seems preferable to consider the state's action (of protecting its nationals) as a sanction for the right of international intercourse between states and individuals, according to the standard of conduct and treatment recognized as proper and lawful by international law and practice."

There is no denying that the author's theories are usually of live interest and most suggestive, but unfortunately he is often abrupt, uncertain, and inconclusive in his arguments. The book would have gained in practical value if Dr. Borchard had contented himself by first presenting his imposing array of precedents and opinions, and had then sought to deduce the philosophical conceptions and legal principles involved. To mix the two methods is most unfortunate and constitutes a structural defect of a serious nature. Moreover, the reader comes to realize that he must be somewhat on his guard on account of the author's inconclusive method of treating legal theories, and must center attention mainly on his extremely able presentation of facts and precedents.

Evidence of the structural defect of this book is to be found in the table of contents. The main divisions of the subject indicated are Part I, Relation between State and Citizen, State and Alien, and between State and State; Part II, The Exercise of Diplomatic Protection; Part III, The Object of Protection—the Person and Property of Citizens; and Part IV, Limitations on Diplomatic Protection. This arrangement proves to be more or less arbitrary and artificial. The same topics keep reappearing in all these main divisions of the subject, without complete treatment in any one place, or—it should incidentally be remarked—without adequate cross references. The subject of nationality, for example, is treated in Part III (most admirably), but we find in Chapter 2 of Part IV, a most important presentation of the question of expatriation, certainly a vital aspect of nationality. It is difficult to understand the reasons for so scattered a treatment of essentially one and the same subject.

In spite of these strictures, one cannot fail to recognize the immense value of Dr. Borchard's work. It should prove an authoritative manual of reference for diplomats, consuls, lawyers, teachers and students of

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international law. It might well serve as the basis for an advanced course of study and research in that field. Supplementing with fresh and well chosen material the Digest by John Bassett Moore, to whom the book is most appropriately dedicated, this work should prove of the greatest importance in the immense task of crystallizing and formulating those exact principles and rules of international law which shall control the conduct of nations.

A general conclusion from a survey of the immense variety and complicated character of the multitudinous questions which give reasonable ground for international controversies, as set forth in Dr. Borchard's book, is that the field of international law is infinitely more extended and involves much more definite subject matter than has been heretofore realized. One is led to see that the attempt to classify as matters of Private International Law, or mere Conflict of Law such questions as relate to rights of nationality, domicile, etc., which at any moment may properly give rise to diplomatic intervention, is illogical and preposterous. When the nations of the world come to realize that the requirements for peaceful intercourse demand that they should reach definite agreements on all these matters and such other matters as the rights of foreign creditors, and the liability of a state for tortious acts, a comprehensive work of the character of Dr. Borchard's will prove of great practical value in aiding in the task of reaching international agreements of various kinds, whether of specific conventions on particular topics, or of statutes and codes of a legislative nature. It is undoubtedly an important contribution to the literature of international law.

PHILIP MARSHALL BROWN.

Outline of International Law. By ARNOLD BENNETT HALL. (Chicago: LaSalle Extension University. 1915. Pp. v, 255.)

The conjunction of the subject International Law with the name of Hall is most suggestive. The author states in the preface: "This volume is intended as a brief, non-technical statement of the underlying principles of international law. It is not written for the specialist, but designed solely for the general student and reader who is interested in the world problems of the day." He further states his belief "that an elementary statement of the legal principles involved would facilitate the popular study and understanding of these problems."

Mr. Hall reveals a good grasp of his subject, and is clear in his state-

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ments. His *Outline*, however, is so palpably an *outline* that its 106 pages virtually constitute hardly anything more than an expanded syllabus.

It is possible that this *Outline* may meet the need suggested by the author: that international law should be popularized, and made easy of access to "the general student and reader." One cannot but be somewhat apprehensive, nevertheless, that skeleton outlines may tend to encourage superficiality of thought. One is led to ask whether it is really desirable to simplify knowledge and reduce it to the limits of newspaper headlines. Is it not rather the obligation of scholars to encourage "the general student and reader" to realize the extent, and the fearfully complicated nature, of many of the problems which challenge human interest?

When one brings to mind such excellent books of handy reference as *Wilson's Handbook of International Law*, and *Hershey's Essentials of International Law*, both of which are replete with marginal references and documentary data, it is difficult to understand just why it should have been thought desirable to publish this *Outline*. It is true that the author also has provided further references and important documents for consultation, but not nearly as comprehensively and serviceably as in the two works cited.

It would seem fair to assume that Mr. Hall's little book is particularly calculated to be of service as a textbook to be used subordinately as a sort of syllabus in a brief course of lectures. In this sense it would seem to be of rather restricted utility, as most teachers of international law would either prefer a more comprehensive textbook or supply their own individual outline of lectures.

PHILIP MARSHALL BROWN.

The People's Government. By DAVID JAYNE HILL. (New York: D. Appleton and Company. 1915. Pp. 287.)

The relation of the individual to the state has received renewed emphasis as a result of present conditions in Europe, and Political Science has in consequence been enriched by a number of studies discussing the nature of democracy, the basis of individual and national rights, the interrelations of government and liberty, the sources of state authority and other similar subjects. Mr. Hill has attempted to trace the development of the state from the time when it was the embodiment of force, through the period in which law was regarded as

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a sovereign decree, until he arrives at the final stage in which law is recognized as a mutual obligation and the citizen appears as lawmaker defining the sphere of state activity and voluntarily submitting to his self-imposed restrictions.

The historical chapters of the book which deal with earlier forms of the state are forcibly written in spite of the fact that some of the generalizations must be taken in a popular rather than in a scientific sense. In contrast with Mr. Ford's *National History of the State*, which asserts that the state made man and that his rights are in consequence not innate but derivative, Mr. Hill finds that the state is "coeval with man as a social being," that rights are based upon an intuition of mutual obligation, and that law is the embodiment of principles of justice inherent in human reason. The chapter dealing with law as a mutual obligation is full of sound political philosophy; in it the rights of life, liberty, and property are subjected to a detailed examination and the author's deductions are at once convincing and singularly illuminating. With respect to the problem of the partition of property attention is called to the fact that most property is the result of joint effort and consequently "the only manner in which mutual obligation can be recognized in the process of wealth production is by permitting the partners in this process freely to estimate the value of their respective contributions by making specific contracts in each particular case" (p. 153). Unfortunately Mr. Hill leaves unanswered the crucial question as to whether the laborer is really able under present conditions to make a free contract with his employer in all cases.

But Mr. Hill is in no sense reactionary in his views of the province of government, as his remarks upon "the injustice of monopoly" will show; he asks for equal opportunities for all, not for unequal laws to equalize the inequalities of men. In speaking of the alleged constitutional barriers to reform he warns us that we must not let our sympathy with poverty and suffering lead us to advocate social legislation which would "sweep away the basic guarantees upon which the whole edifice of justice is erected." But more insistent still is Mr. Hill's warning that democracy, now that it has won the power to impose its will, must not itself become arbitrary and absolute.

It is refreshing at a time when there is so much loose thinking upon the subject of popular control of governments to be reminded that mere majorities do not constitute public opinion, that legislation is not of itself a cure-all for the ills of the body politic, that true reform must be based not upon coercion but upon an enlightened sense of justice among

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the people. In this respect the brief volume before us is a valuable contribution to the literature of political philosophy.

C. G. FENWICK.

The History of Twelve Days, July 24th to August 4th, 1914. Being an Account of the Negotiations Preceding the Outbreak of War, Based on the Official Publications. By J. W. HEADLAM, M.A., formerly Fellow of King's College, Cambridge. (New York: Scribner's. 1915. Pp. xxiv and 412.)

In the opinion of the reviewer this is one of the very best books, which has been published on the immediate causes of the war. It is fuller than Beck's *Evidence in the Case*; constructed from ampler materials than Price's *Diplomatic History of the War*; and worthy to stand beside Stowell's excellent *Diplomacy of the War of 1914*. It is altogether unlike the numerous biased and exaggerated accounts which have been written by advocates on both sides, since it is throughout founded upon a full exposition and careful interpretation of the primary documents upon which at present our conclusions must be based. About a third of it is made up of parts of the papers published by the various European governments, which are neither scantly quoted nor printed at length in appendixes, but set into the text of the volume, in the actual narrative of which they take their proper part. And it is a tribute to the skill of the author and his mastery of the documents which he uses that such numerous and often lengthy extracts inset and printed in smaller type little interrupt the story or seem out of place in the absorbing narrative where they stand.

In such a book the opinion of the author about his sources is of great value, and it is to be noted that his confidence in the British White Paper and the French Yellow Book results from the fact that notwithstanding difference in character they seem to him amply to explain and corroborate each other in matters of occurrence. The Belgian Grey Book and the Serbian Blue Book assist in only a small portion of his account, while the Russian Orange Book and the Austrian Red Book are satisfactory as far as they go but disappointing because they leave so much untold. Least satisfying of all, he thinks, is the German White Book, which is both scanty and lacking in qualities to inspire confidence. "The feeling left upon my mind after a long and careful study of all that has been put forward by the German Government is that it is impossible to put any reliance on anything that they say

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either with regard to their own motives or intentions, or in regard to the simplest facts, unless their statements are amply corroborated from other sources" (p. xi).

The book consists of two parts, in each of which there are introductory chapters, in the first on Serbia and Austria, including an account of the fateful note, and in the second a chapter on Great Britain and the *Entente Cordiale*, and another on the history of Belgium. The remainder of the work, saving four short appendixes, has to do with the difficult story of the negotiations and diplomatic working in the days from July 24 to August 4. The narrative is admirably arranged, so that the story is always clear and the conclusions decisive. The papers of all the governments are used throughout to whatever extent they can throw light upon the situation, and as far as I have been able to note they are used accurately and in good faith. The statements of the different representatives are carefully examined and subjected to intelligent criticism in comparison with each other. Nowhere have I noticed the deplorable tendency, so common in lesser works on this subject, to employ the documents for the purpose of illustrating and embellishing theories already conceived; but the documents are studied so that the author may discover what story they tell, he interpreting them and explaining as he understands them. He does not follow the easy method of apparent fairness, which consists in avoiding difficulties by coming to no conclusion, or by artificial distribution of praise and blame to both sides. He makes his own interpretations and he has his own point of view, which is favorable to the allies of the *Entente;* but his point of view is frankly stated so that the reader is not deceived by it, and this point of view remains merely a factor subordinate to the documents and the statements deduced from them, whereas in some of the writing of Burgess, Münsterberg, and others the point of view and ideas preconceived appear to be body and soul of the work with facts and documents subsidiary.

Among the numerous conclusions which the work contains may be set down the author's opinion that the note to Serbia was deliberately so framed as to be an ultimatum, so phrased as to insure rejection, and with such scant time allowed as to make it impossible for other nations to assist in obtaining the satisfaction demanded and so avoid war; that Russia tried in vain to have the time extended; that Russian mobilization was justifiable and necessary for her interests; that Germany would not have given Austria a free hand if she had not known in advance the nature and contents of the note to Serbia, though it may be

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that it was not communicated to the German government in official form before it was sent: that probably Prince Lichnowsky in London did not know this and may not have been in the secrets of his government; that England and France, and apparently Russia, did not want war, and strove honorably to avoid it; that Sir Edward Grey endeavored to accomplish this by all means in his power, desiring to substitute a concert of the powers for two great hostile alliances; that by July 28 Germany had resolved upon war, and that thereafter neither partial nor total mobilization by Russia really determined the matter; that British diplomacy was wise in preserving a non-committal attitude to the very end; that England, whatever, might have developed afterwards, was actually brought into the struggle by the violation of the neutrality of Belgium.

I have noted one or two typographical errors, and a few mistakes of minor importance, and I believe that a table of the days of the week in connection with the dates of the twelve days would be of great service to the average reader. But in respect of all more important matters I have found the book admirable and interesting, and I believe it deserving of very high praise.

EDWARD RAYMOND TURNER.

The European War of 1914: Its Causes, Purposes, and Probable Results. By JOHN WILLIAM BURGESS, Ph.D., J.U.D., LL.D., Formerly Professor of Constitutional and International Law, and Dean of the Faculties of Political Science, Philosophy, and Pure Science, in Columbia University. (Chicago: McClurg and Co. 1915. Pp. ix and 209.)

This book, as a contribution to war literature, little merits a review, but it does serve very well to illustrate the faults which characterize a great deal of similar writing on the same subject. It may be said at once that the volume makes pleasant reading, and that some portions of it are interesting and instructive, especially those least related to the theme which it purports to treat of. The author certainly makes good his contention that American export of munitions is a right and not a duty (ch. vii); and parts of his description of the Dual Monarchy are excellent (pp. 160 to 162). More than a third of the volume has to do with the good qualities of Germans, and the service rendered by Germans in America in former days with England's old hostility and oppression, and with other things which pro-German advocates in this

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country usually describe when they undertake to write about the causes of the war.

That part of the book which has to do with the origin of the conflict and its possible consequences is devoid either of merit or importance. First the author deals with the occasions of the war. He has read diplomatic papers, he says, for fifty years, and taught others to read them for nearly forty. To him it is remarkable that a perusal of the British White Paper should lead people to think that Sir Edward Grey desired peace. "I have read all of the numbers of this paper through many times and can repeat verbatim the language of those which are pivotal and crucial, and I am quite sure that there is another way to interpret that paper" (pp. 1, 2).

The author's method is not so much to deal with the paper itself, as to explain what it says in terms of what he is confident the diplomats must have meant. He states what he thinks Sir Edward Grey should have done—and the great man may perhaps smile some day if he reads the patronizing and impertinent little lecture which he ought to have given to the Russian government (pp. 17, 18); next he says that instead of doing what he thinks should have been done it appears that Sir Edward acted as one who desired to bring about a war of extermination against Germany; and finally he asks the reader whether the conclusions which he wishes to prove would not be the elements of such a plan (pp. 18, 19). And what are the conclusions which he reaches? That England encouraged Serbia to resist the demands of Austria; that she encouraged Russia to intervene between the two; that she then attempted to secure arbitration of the dispute between Russia and Austria-Hungary; that she represented Germany as responsible for failure to bring about this arbitration; that she did not restrain Russian mobilization; that she encouraged France to sustain Russia; that she refused to come to any understanding with Germany upon any conditions; and at last entered the war upon a pretext (pp. 19, 20, and following).

For the conclusions thus stated he seeks in the British paper such fragments as will give him corroboration or illustrative material. There is no patient examination, no careful analysis of the paper itself, no comparison of this paper with the publications of the other governments, no real criticism. He does not lead up to his conclusions, but first makes them and then bolsters them up as best he can. Opinions, illogicalities, questionable statements, and exaggerations abound. What the Germanic powers did is unhesitatingly assumed to be right, and the actions of others judged accordingly. To the author there can be no

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doubt that the murder of the archduke was for the purpose of causing a war to destroy the Germanic empires (p. 9); that the question between Austria and Serbia was unarbitrable (p. 29); that Germany was bound to assist Austria, without similar obligation of France to Russia (pp. 33, 34). And such confidence does the author have in his explanation that he declares: "I believe it is the way every unprejudiced historian and diplomatist will read it twenty-five years from today;" though a little later, more wisely, I fancy, he says: "I do not think that I possess any of the qualities of the prophet" (pp. 40, 41, 113).

In a chapter on the proximate causes of the war, the author, basing his assertion on information which he says he has obtained, declares that British foreign policy looked to the establishment of a new domain from Egypt to Persia, thus consolidating the empire (pp. 60, 61); and he traces what to him seem certain steps in the surrounding Germany with enemies who would crush her. In another chapter on Belgian neutrality he repeats statements which have been publicly challenged as inaccurate and false; and a theory in international law which has aroused contempt both here and abroad. In his opinion the disasters which came to Belgium were owing entirely to England and to the Belgians themselves.

A slight performance like this ill deserves so long a notice, except in so far as it may serve as an example of much of Germanist partizan writing. At the worst it appears disingenuous and misleading; at the best a great deal of it seems the result of ignorance, bias, incapacity and haste.

EDWARD RAYMOND TURNER.

Pan-Americanism. A Forecast of the Inevitable Clash Between the United States and Europe's Victor. By ROLAND G. USHER. (New York: The Century Company. 1915.)

Whether or not the author's conclusions are accepted, the subject of his work is one which must of necessity make a special appeal to the interests of the American Republics, North, Central, and South. The close of the war will settle the destinies of Europe only to place those of America in the balance. Professor Usher holds that South America is the prize which will entice England or Germany, whichever is victor in the present world-war, "to challenge our supremacy in the Western Hemisphere." He believes that the non-military character of the people of the United States, their disinclination to arm except for the

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greatest reasons, and their entire lack of present interest in conquest—are all inconsistent with the Monroe Doctrine. Our national characteristics and our holding to the Monroe Doctrine, he says "are irreconcilable, and the day has now come when the test is about to be made to discover which of the two is the stronger current of our national life."

It seems hard to believe that a majority of our people would accept Professor Usher's definition of the Monroe Doctrine. If our national characteristics and the Monroe Doctrine are so utterly irreconcilable it seems strange that it should have played so important a part in our foreign policy, and that it should have shaped so largely our diplomacy in the long years that we have adhered to it. Professor Usher's chapter on the "Expediency of the Monroe Doctrine" is distinctly disappointing. Viewed historically, it is difficult to accept his verdict that the Monroe Doctrine spells aggression, or that it means Pan-Americanism (as he defines that term), expansion, or imperialism. The purposes for which our statesmen took part in its formulation, and the uses to which it has been put, have certainly been largely defensive—if not entirely so. Unless the European war puts the victorious belligerents in a much stronger position than at the opening of hostilities, the Monroe Doctrine will doubtless continue to be upheld at home and at least respected abroad—if not formally recognized.

Professor Usher's definition of Pan-Americanism seems rather broader than the accepted meaning of that term, and seems to carry with it the idea of a rather closer union with South and Central America than one is accustomed to conceive. It seems doubtful whether the difficulties in the way of a strictly defensive union or alliance against European aggression on the part of the American Republics are so unsuperable as he deems them. Certainly recent events, such as the concerted action of the A.B.C. powers and the United States in Mexican affairs, the establishment of banking branch houses in South America under the Federal reserve act, the recent meetings of trade representatives of the American Republics, and the pending treaty with Columbia—may be taken as indications of a growing feeling of mutual interest. While Pan-Americanism as a defensive policy may not be a "fait accompli," it does not seem to be impossible of realization.

The most disappointing, because the least scientific in its treatment, and because of its tendency to use surmises unsupported by evidence, is the chapter on "Japanese Expansion." While it would be difficult to disprove the existence of danger to the United States from Japan,

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it would be equally hard to support Professor Usher's thesis that we are in danger of invasion from that source. In its general tone this chapter reminds one of certain well known orations on the "Yellow Peril," and the Japanese aggression in Turtle Bay.

The bibliography at the end of the volume will be found useful to those who wish to delve deeper into the subject of Pan-Americanism. It is to be regretted that Professor Usher did not give foot notes citing his authority for some of his statements and conclusions in chapters dealing with such questions as the "Ethics of Expansion" "The Analysis of Pan-Americanism" or the discussion of Japanese expansion. The book is written in the same popular style and with the same journalistic rapidity of movement which characterized the author's earlier work, "Pan-Germanism." The strength of the book lies in its interesting style, its appeal to the popular imagination, and in its general view of the subject; but, paradoxical as it may seem, there too lies its weakness.

JAMES MILLER LEAKE.

Reflections on Violence. By GEORGES SOREL. Trans. by T. E. Hulme. (New York: B. W. Huebsch. 1915. Pp. 229.)

Whatever the future of revolutionary syndicalism in Europe, the movement will at least continue to have interest for the historian as a type of social agitation, based upon novel and distinctive theories, which had attained somewhat formidable proportions at the moment when "*le régime bourgeois*" eventuated in an outbreak of "violence" more atrocious and more widespread than any of which the syndicalist had dreamed. An English version of the principal book of the chief philosopher of the movement is therefore to be welcomed. The translation, it may be said at once, is clear and idiomatic, and for the most part accurate. There are occasional errors, such as the rendering of *moeurs* by "customs" (29, 44, 57), and of *cléricaux* by "clergy" (249). This last makes nonsense of the passage in which it occurs. "Worthy progressives" is an over-translation of *braves gens*.

To be rightly understood the book needs to be read backwards. For it is concerned with two questions, that of the ends to be accomplished by the social revolution, and that of the means by which it can be effectually brought about. The latter question is discussed first and at much greater length; but the spirit of this discussion, and the main premises of it, are sure to be missed by readers who do not bear in mind the ethical ideal of the syndicalist revolution, as set forth in

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the concluding chapter on *la morale des producteurs*. It is primarily, though not solely, Sorel's conception of the ends to be accomplished, that prescribes the choice of those means to which he gives the sensational and partially misleading name of "violence."

The moral ideals which inspire Sorel are highly dissimilar to those which have animated most of the older Socialism. His hostility to the existing *régime* is not chiefly due to a demand for justice in the distribution of the produce of industry, nor to a humanitarian sympathy with the victims of capitalistic 'exploitation,' nor to a sense of the waste and disorder involved in the competitive system. The *morale des producteurs* is a sort of 'gospel of work.' Its ideal will be realized only when productive industry is freely and joyously carried on by every man for its own sake, with no desire for compensatory sugar-plums, in the form either of material rewards or the praise of others. The new social order is to be one in which men have become capable of finding their chief satisfaction in the activity that is inevitably their destiny, and in which life is lived simply, unaffectedly, and with a certain austerity. "The striving towards perfection which manifests itself in spite of the absence of any personal, immediate and proportional reward, constitutes the secret virtue that assures the continued progress of the world." The syndicalist millennium is to give this virtue constant play in the daily business of every man.

In order to bring about this consummation two things are chiefly necessary. The first is that the working class shall be kept undebauched by the ideals and ambitions of the existing *bourgeois* society. Among the workers, and among them alone, is to be found the germ of that "virtue which has power to save civilization—a virtue which middle-class intellectuals are incapable of understanding" (267). Hence the necessity for avoiding the methods of parliamentary socialism—which merely have the effect of robbing the proletariat of its leaders, by exposing them to the corrupting influence of middle-class associations. Hence also the necessity for "violence" i.e., for frequent strikes, undertaken not for the sake of gaining specific concessions, but to prevent the *rapprochement* of the two classes and the consequent infection of the workers with the base and vulgar standards dominant among the *bourgeoisie*. But a second requisite, for syndicalism, as for every great popular movement, is that it shall be animated by a "myth"—by a vivid and stirring image of some single, near-by, divine, event, in which every participant in the movement can picture himself as having a part. The "myth" which thus functions in syndicalism is

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that of the general strike. "Strikes have engendered in the proletariat the noblest, deepest and most moving sentiments that they possess; the general strike groups them all into a coördinated picture, and by bringing them together, gives to each its maximum of intensity" (137). It is not the practicability of the general strike that Sorel assets, but only the efficacy of the "idea" of it. A "myth must be judged as a means of acting on the present; any attempt to discuss how far it can be taken literally, as future history, is devoid of sense" (135).

The most crushing comment upon the book has been, unwittingly, uttered by Sorel himself, when he remarks that "the revolution has no place for intellectuals who have embraced the profession of thinking for the proletariat." His own (former) profession is there defined with precision. He is an intellectual of the intellectuals—all the more so in that he is, after the present Bergsonian fashion, an "anti-intellectualist"— who seeks to save the unlettered classes from the depraving influence of middle class culture by offering them a large and learned volume of social philosophy, heavily buttressed with footnotes. He is an avowed "pessimist" who sets out to inflame the popular mind with unconquerable hopes, by preaching a "myth" concerning which his own scepticism is unconcealed. The lofty, austere, and almost ascetic, moral ideals which he looks to the revolutionary proletariat to realize, are not such as the proletariat, left to itself, has ever shown much disposition to pursue. The very glamor which the working-class soul possesses in his eyes is a typical *bourgeois* illusion. One may well doubt whether Sorel has ever genuinely expressed the real temper of the movement which he has sought to interpret and to promote. And it is not at all surprising that he has of late looked rather towards royalism and Catholicism and a return to the ancient traditions of French culture, for a more congenial expression of that distaste for the vulgarity of middle-class ideals, and that contempt for the pedestrian methods of the mere 'intellect,' which first inspired his syndicalist philosophy.

A. O. LOVEJOY.

The Enforcement of Decrees in Equity. By CHARLES ANDREWS HUSTON. Harvard Studies in Jurisprudence, No. 1. (Cambridge, Mass.: Harvard University Press. London: Humphrey Milford. Pp. xxi, 189.)

This essay is a plea for a wider operation *in rem* for decrees in equity, in line with the modern tendency to enlarge the powers of all courts

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to grant, where practicable, specific rather than compensatory or substitutional relief when legal rights are violated.

After stating his thesis and outlining the theoretical argument in support of it, the author shows that there are now statutes in force in England and in most of the States in this country empowering courts of equity to give a *real* effect to their decrees in certain cases by directly appointing officers to execute conveyances upon the failure of the parties to do so. These statutes are collected in the appendix. Next, he traces the parallel but more extensive progress of the Roman law from substitutional to specific relief and its enforcement by "natural execution," the advantages of which are fully recognized and preserved in the modern civil law systems. Recurring to the law of this country the author points out the need for legislation extending the power of equity to grant relief when the property in litigation is within the territorial jurisdiction of the court, but the defendant is not; notably in suits to enforce contracts to convey real estate, action to remove clouds on titles, and interpleader proceedings. He then sketches the development of equitable procedure *in rem*, and closes with a discussion of the growing trend of modern law toward the recognition of certain equitable rights—particularly those of *cestui que* trust—as being genuine rights *in rem*, rather than the purely personal obligations they were originally considered.

The author's treatment is interesting and able, and his conclusions lead in the direction of substantial and practical reforms in equity procedure.

J. WALLACE BRYAN.

The Reconciliation of Government with Liberty. By JOHN W. BURGESS. (New York: Charles Scribner's Sons. 1915. Pp. xix, 394.)

It is an almost wholly unsuccessful endeavor that Professor Burgess makes to discover political systems, past or present, in which government has been reconciled with liberty. One is, however, not surprised at this, or at being told that "it has been the search of the ages to find," and "the travail of the ages to construct," such a "mellennial equilibrium," when he learns the "three fundamental factors" that the author considers indispensable to guard against despotism or anarchy: "first, the organization of the sovereign power, the state, back of and independent of the government; second, the delineation by the sovereign

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of the realm of individual immunity against governmental power; and third, the construction by the sovereign of the organs and procedure for protecting this realm of Individual Immunity against the encroachments of Government."

Asia, Africa, and Europe have failed to furnish any such millennial political system, but the story of their "travail" consumes three-fourths of the book. Switzerland is the only one of the states of Europe which has regarded the first of these axioms of "sound political science;" in delineating a sphere of individual liberty, modern European systems are fairly satisfactory, but this does not save them from condemnation on the ground that they do not meet the third requirement: the individual is not sufficiently protected against the law-making body. In some cases, there should be "a greater independence and even a certain jealousy" between the executive and legislature, instead of union under parliamentary government; but the great defect is that the trend is toward a unicameral system, "however scrupulously the form of the bicameral system may be preserved." The present constitutions of Europe are for this reason unsatisfactory; liberty is secured "by the benevolence of government and not by constitutional right."

But "the future of all the Americas is never to be despaired of." There is "one real state," the Argentine Republic, which is "the light and hope of South America" in solving the world problem of reconciliation, and there is—or at last there was, until 1898—"one real state in North America," the war amendents having sufficiently extended the realm of individual liberty. But even before this there were certain defects. Equal representation in the Senate is excepted from the operation of the sovereign power, and constitutional amendments should be by the method which is, "from the point of view of Political Science the ideal one" initiation by a national convention with ratification by conventions in three fourths of the States of the Union. Instead, we have had the amendments initiated by Congress, and ratified "by the legislatures of two-thirds [*sic*] of the States."

Nevertheless, until 1898, ours was "the most perfect system of civil liberty." But this is true no longer. The decisions of the United States supreme court in the insular cases have been destructive of liberty; the popular election of United States senators has changed the conservative composition of Congress, and the income tax amendment gives the government unlimited power over property.

It is evident, I think, from this exposition, that Professor Burgess differs from the great majority of political theorists, and so only one

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comment need be ventured. His first "fundamental factor" rests on the same confusion of terms that he made in his *Political Science and Constitutional Law:* it is improper to speak of the "State" as organized either within or without the "government," for the latter is simply the machinery of the "State." This confusion accounts for the futility of the method adopted in searching for the "millennial political system." Whether government and liberty are reconciled may be ascertained only by an examination of what the government does—whether the laws passed encroach on the liberty of the citizen. What this volume really attempts is to discover whether the citizen is protected against government by the State.

LINDSAY ROGERS.

Undercurrents in American Politics. By A. T. HADLEY. (New Haven, Conn.: Yale University Press. 1915. Pp. 185.)

The Liberty of Citizenship. By S. W. MCCALL. (New Haven, Conn.: Yale University Press. 1915. Pp. 134.)

These volumes consist of series of lectures, those of President Hadley having been delivered at Oxford University, England, and at the University of Virginia, while those of Governor McCall were delivered on the Dodge Foundation at Yale University. The Oxford lectures of President Hadley have to do with the general subject of "property and democracy," while his Virginia lectures are concerned with political methods. In the first series of lectures, the author traces the interaction of political and economic tendencies in our history, and develops an economic interpretation of the Constitution. He holds that the incorporation in that instrument of guaranties to property owners was not the result of a conspiracy, but was more or less unwitting. He points out that "where every man of energy and enterprise expected to become a property owner, the community was not inclined to favor legislation that restricted the rights of property" (p. 76). He observes also that a solution of the question of state control will not be reached until the public demand for state regulation of industry and for trained civil service go hand in hand. In the second series of lectures, President Hadley considers the perversion of democratic government through the operation of party machinery. He admits that the results of party action are both good and bad, but is inclined to think that the bad predominates. In continuation he considers some of the so-called remedies

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for the perversion of democratic government through party action, such as the direct primary the initiative and referendum, and the recall, but holds that these are inadequate "because it is impossible to make *unorganized* public opinion effective in practical politics" (p. 149).

The lectures of Governor McCall exhibit the traditional attitude of the old-time individualist. In opposing state socialism, he assumes that because public ownership, as thus far adopted, has not been a success in this country, its further extension would be still more disastrous. He assumes, without proof, a necessary incompatibility between individualism and collectivism. In discussing the Constitution, he adopts, in the main, the traditional laudatory, uncritical view. These lectures, however, as well as those of President Hadley, are well worth a circulation wider than the audiences to which they were originally delivered.

J. M. MATHEWS.

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RECENT GOVERNMENT PUBLICATIONS OF POLITICAL INTEREST

JOHN A. DORNEY
Library of Congress

UNITED STATES

Address of the President of the United States delivered at a joint session of the two Houses of Congress, December 7, 1915. 1915. 18 p. 8°.

American Historical Association, Annual Report of the, for the year 1913. In two volumes. Vol. 1. 1915. 438 p. 8°. House doc. 1697.

——— Vol. 1. Papers of James A. Bayard, 1796–1815. Edited by Elizabeth Donnan. 1915. 539 p. 8°. House doc. 1697.

The Balkan Wars. Being a series of lectures delivered at the Army Service Schools, Fort Leavenworth, Kansas, by Clyde Sinclair Ford, Major Medical Corps, U. S. A. 1915. 150 p. 12°. *War Dept.*

Changes in Senate Rules. Standing rules for conducting business in the Senate of the United States showing certain amendments intended to be proposed by Senator Robert L. Owen, of Oklahoma . . . 1915. 24 p. 8°. Senate document no. 5. 64th Cong. 1st Sess.

Citizenship, Registration of American Citizens, Issuance of Passports, Etc. Compilation of certain departmental circulars relating to. 1915. 88 p. 8°. *Department of State.*

Correspondence with a Foreign Government, and acceptance of a commission to serve a foreign state in war, memorandum on the history and scope of the laws prohibiting. Section 5 and 9, Federal Penal Code by Charles Warren, Assistant Attorney General. 1915. 27 p. 8°. *Department of Justice.*

Decisions of Courts Affecting Labor, 1914. 1915. 346 p. 8°. House doc. 1678. Bulletin whole no. 169. (Labor Laws of the U. S. series no. 6.) *Department of Labor, Bureau of Labor Statistics.*

Diplomatic Correspondence with Belligerent Governments Relating to Neutral Rights and Duties. 1915. 198 p. fol. *State Department.*

Five Per Cent Case . . . A copy of all evidence introduced and all exhibits received at hearings before the Interstate Commerce Commission in Docket no. 5860, "Revenues of Rail Carriers in Official Classification Territory" and investigation and suspension Docket no. 333 entitled "Rate Increases in Official Classification Territory." In 8 vols., index in vol. 8. 1915. 8°. *Senate Committee on Interstate Commerce.*

Contains testimony, diagrams, statistical tables and maps. Total pagination 6949 p.

General Peace Treaties of 1914. All ratified and made public. 1915. Various paging. 8°. *Department of State.*

Note: Collection of confidential executive documents of 63d Congress.

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The National Bank Act as Amended. The Federal Reserve act and other laws relating to national banks. . . . July 1, 1915. 1915. 285 p. 8°. *Treasury Department, Comptroller of the Currency.*

A Naval Auxiliary Merchant Marine. Speech of Hon. William G. McAdoo, Secretary of the Treasury, delivered before the Chamber of Commerce of Indianapolis, Ind., on October 13, 1915 . . . 1915. 24 p. 8°. Senate document no. 4. 64th Cong. 1st Sess.

Navigation Laws of the United States, 1915. 1915. 585 p. 8°. *Department of Commerce, Bureau of Navigation.*

Neutral Shipping. Letter of the Secretary of State to the British Government, dated October 21, 1915, remonstrating against interference with American cargoes consigned to neutral ports. File no. 763. 72112. [1915.] 26 p. fol.

Parcel Post Convention between the United States and the Argentine Republic. 1915. 13 p. 8°. *Post Office Department.*

Principal Navies of the World. Information concerning some of the . . . 1915. 28 p. 8°. *Office of Naval Intelligence, Navy Department.*

Proposed Military Policy, An Outline of the. 1915. 8 p. 8°. *War Department.*

Proposed plan of secretary of war providing for a change in our present military policy.

Rural Credits, Bills Introduced in the United States Senate and the House of Representatives during the Sixty-third Congress relative to . . . 1915. Various paging [1000 p.] 4°. *Senate, Secretary to.*

Note: Contains a bound collection of all bills on this subject as introduced.

The Seaman's Act. General Rules and Regulations prescribed by the Board of Supervising Inspectors under provisions of the act of March 4, 1915, as amended at board meeting of January, 1915, and approved by the Secretary of Commerce effective on and after November 4, 1915. Rule III, Ocean and coastwise, and Rule III, Lakes, Bays, and Sounds. Edition: November 4, 1915. 1915. 71 p. 8°. House document no. 125. 64th Cong., 1st Sess.

Shipping Casualties. (Loss of the steamship *Falaba.*) Report of a formal investigation into the circumstances attending the foundering on 28th March of the British steamship *Falaba,* of Liverpool, . . 1915. 11 p. fol.

South American Countries, Financial Developments in. By William H. Lough. 1915. 42 p. 8°. Special Agents Series no. 103. *Department of Commerce, Bureau of Foreign and Domestic Commerce.*

The Territory of Alaska, general information regarding. 1915. 36 p. 8°. *Department of the Interior, Office of the Secretary.*

Uniformity of Laws Governing the Establishment and Regulation of Corporations and Joint Stock Companies in the American Republics. Report of Prof. Roscoe Pound. Submitted to Hon. William G. McAdoo, Chairman, Pan American Financial Conference, 1915, 1915. 13 p. 8°. *International High Commission.*

CALIFORNIA

Labor Laws of California. Compiled by John P. McLaughlin, Commissioner. 1915. 252 p. 16°. *Bureau of Labor Statistics.*

Primary Election Laws of California, together with annotations and analysis by the author of the bills. 1. Direct primary law, for August election (the so-

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called "Non-partisan law"). 2. Presidential primary act, for May election. 1915. 64 p. 8°. *Secretary of State.*

GEORGIA

Opinion in Case of the State vs. Leo Frank. Supplement to the message of the governor to the General Assembly of Georgia. 1915. 43 p. 8°.

IOWA

The Constitution of the State of Iowa and Amendments from 1857 to 1914, with historical introduction and index by Benj. F. Shambaugh. 1915. 131 p. 32°. *Historical Society.*

The Iowa Official Register for the Years 1915-16. . . . 1915. 918 p. 8°. *Secretary of State.*

MISSOURI

Workmen's Compensation and Employers' Liability Problem. . . . A prelude and supplementary to the 1914 Red Book. [1915] 40 p. 8°. *Bureau of Labor Statistics.*

NEW HAMPSHIRE

Manual for the Use of the General Court. . . . 1915. 336 p. 16°. *Secretary of State.*

NEW YORK

City and County Governments. The relation of the state to the city school system. . . . 1915. Various paging. 8°. *Constitutional Convention Commission.*

Note: N. Y. Constitutional Convention Commission established by Laws of 1914, to collect, compile and print information and data for the Constitutional Convention of 1915.

The Constitution and Government of the State of New York. An appraisal . . . 1915. 246 p. 8°. *Constitutional Convention Commission.*

County Government. Pt. 1. Papers on special topics. Pt. 2. Organization of Westchester County. Pt. 3. Expenses of education. Pt. 4. County Finance. 1915. 613 p. 8°. *Constitutional Convention Commission.*

The Government of the City of New York. 1915. . . . 260 p. 8°. *Constitutional Convention Commission.*

Note: A collection of addresses and discussions presented at a series of eleven lecture conferences held under the auspices of the Academy of Political Science in the city of New York with the coöperation of the Bureau of Municipal Research, the Institute of Arts and Sciences of Columbia University, and a citizens committee, April 7 to 30, 1915.

Government of the State of New York. A description of its organization and functions. Prepared for the . . . Constitutional Convention Commission by the New York State Department of Efficiency and Economy and New York Bureau of Municipal Research. . . . 1915. 768 p. 8°. *Constitutional Convention Commission.*

Index Digest of State Constitutions. Prepared for the New York State Constitutional Convention Commission by the legislative drafting research fund

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of Columbia University. 1915. 1546 p. 8°. *Constitutional Convention Commission.*

New York State Constitution. Annotated. Pt. 1. Text in force April 6, 1915, with notes. Pt. 2. Amendments adopted and proposed, 1895–1914. Prepared under the direction of the New York State Library. 1915. 376 p. 8°. *Constitutional Convention Commission.*

Proposed Constitution of the State of New York as Amended and Revised. Adopted by the convention, September 10, 1915, with explanatory abstracts and form for submission to the voters. *Secretary of State.*

The Revision of the State Constitution. A collection of papers, addresses and discussions presented at the annual meeting of the Academy of Political Science in the city of New York, Nov. 19 and 20, 1914. Pt. 1 and 2. 1915. 2 v. 8°. *Constitutional Convention Commission.*

TEXAS

Legislative Manual. Thirty-fourth Legislature . . . 1915. 256 p. 8°.

Penitentiary Investigating Committee. A record of evidence and statements before the . . . committee appointed by the thirty-third legislature of Texas. 428 p. 8°.

VIRGINIA

Taxation in Virginia, A Brief History of. By Edgar Sydenstricker. 1915. 66 p. 8°. **Legislative Reference Bureau.**

WISCONSIN

The Wisconsin Blue Book 1915 . . . 1915. 568 p. 8°. *Industrial Commission.*

AUSTRALIA

Biographical Handbook and Record of Elections for the Parliament of the Commonwealth . . . 1915. 357 p. 8°. *Parliament, Librarian.*

Information covers period 1901–15.

Report on the Business Management of the Postmaster-General's Department. . . . . By Robert McC. Anderson. [1915] 41 p. fol.

AUSTRIA

Diplomatic Documents Concerning the Relations of Austria-Hungary with Italy from July 20th, 1914, to May 23d, 1915. [1915] 190 p. 8°. *Ministry of Foreign Affairs.*

BELGIUM

Correspondance Diplomatique relative a la Guerre de 1914. (24 Juillet–29 Août.) Paris. 1914. 56 p. 8°. *Ministre des Affaires Etrangères.*

Correspondance Diplomatique relative a la Guerre de 1914–1915. II. Paris. 136 p. 8°. *Ministre des Affaires Etrangères.*

L'Action de L'Armée Belge pour. La Défense du Pays et le Respect de sa-

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Neutralite. Rapport due Commandement de l'armée (période du 31 Juillet au 31 Décembre 1914). Paris. 97 p. Oblong 8°.

Note: Contains maps.

La Neutralité de la Belgique . . . Paris. Nancy. 1915. 165 p. 16°. *Ministre d'État.*

La Violation du Droit der gens en Belgique. . . . Paris. Nancy. 1915. 167 p. 8°. *Ministre D' État.*

Note: 1. Rapports officiels de la Commission d' enquête sur la violation des règles du droit des gens, des lois et des cutumes de la guerre.
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